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No. 10

Supreme Court, U.S.
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Supreme Court of the United States

SHARON TAYLOR, et al

Petitioners,

v.

ACXIOM CORPORATION, et al

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

THOMAS M. COREA
THE COREA FIRM, P.L.L.C.
Renaissance Tower
1201 Elm Street,
41st Floor
Dallas, Texas 75270
214-953-3900

ANDY TINDEL
Counsel of Record
PROVOST UMPHREY LAW FIRM
112 E. Line Street
Suite 304
Tyler, Texas 75702
903-596-0900
atindel@andytindel.com

J. MARK MANN
THE MANN FIRM
300 West Main Street
Henderson, Texas 75652
903-657-8540

Counsel for Petitioners

232642

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

1. Whether knowingly obtaining a driver's personal information from a motor vehicle record for a purpose not permitted under the Driver's Privacy Protection Act, i.e., the obtainment of personal information contained in motor vehicle records solely for purposes of resale or redisclosure, states an actionable claim for relief under the Driver's Privacy Protection Act.

2. Whether knowingly obtaining a driver's personal information from a motor vehicle record for a purpose not permitted under the Driver's Privacy Protection Act, i.e., the bulk obtainment of personal information contained in motor vehicle records for purposes of a party's convenience or cost saving or for a party's continued use, in a database or otherwise, as a business resource or in the conduct of ordinary business activities, states an actionable claim for relief under the Driver's Privacy Protection Act.

3. Whether Petitioners have standing to bring their claims under the Drivers Privacy Protection Act against Respondents.

LIST OF PARTIES

Petitioners are Sharon Taylor, James Douglas Booker, Willie B. Booker, Lowry Briley, Twilah Brown, James D. Clary, Sharon A. Clary, Alice M. Cooks, Arlando Cooks, Elizabeth DeWitt, Kenneth Gossip, Sr., Kennice Gossip, Pamela Hensley, Robert G. Holliness, Carolyn Latham Holub, Brandi Jewell, Tracy Karp, Venisia Booker McGuire, David Patterson, Ronnie Phillips, James Roberts, Luz Ann Roberts, Kimberly Dawn Underwood, Marilyn Whitaker and William "Troy" Wilson.

Respondents are American Driving Records, Inc. d/b/a First Advantage ADR, a/k/a Agency Records, Inc.; Southwestern Bell Telephone, L.P. d/b/a Southwestern Bell Telephone Company; Safeway Inc.; Background Information Systems, Inc.; HEB Grocery Company, LP; RealPage, Inc.; FedChex, L.L.C.; ACS State & Local Solutions, Inc.; Spartan Insurance Company; Household Drivers Report, Inc. d/b/a HDR, Inc.; Gila Corporation d/b/a Municipal Services Bureau; Insurance Technologies Corporation; Hawkeye Insurance Services, Inc.; The Hearst Corporation d/b/a Houston Chronicle; American Student List Company, Inc.; Coe Information Publishers, Inc.; Source Data, Inc.; Reliant Energy, Inc.; Driver Training Associates, Inc. d/b/a TicketSchool.com; American Electric Power Service Corporation; United Teacher Associates Insurance Company; Tenant Tracker, Inc.; National Statistical Service Corporation; ADP Screening and Selection Services, Inc. a/k/a Avert, Inc.; American Municipal Services Corporation; Emaginenet Technologies, Inc.; Globe Life and Accident Insurance Company; Energy Future Holdings f/k/a TXU

Business Services Company; Softech International, Inc.; Defensive Driver Online, Ltd.; ABC Data, Inc. d/b/a UNICARD Systems, Inc.; Lee Farish Computer Services, Inc.; Biometric Access Company; Freeman Publishers, Inc.; Paradise Development, Inc. d/b/a Drivesafe Defensive Driving; Safety-USA Institute, LLC; Talbot Group, Inc.; Aristotle International, Inc.; Continueded.com, LLC d/b/a Idrivesafely.com; Allied Resident/Employee Screening Service, Inc.; Zebec Data Systems, Inc.; Infonation, Inc.; Cross-Sell, Inc.; Federated Retail Holdings, Inc. f/k/a The May Department Stores Company d/b/a Foley's; PropertyInfo Corporation, Successor by Merger to REI Data, Inc.; LML Payment Systems Corp.; Realty Computer Solutions, Inc. d/b/a Real-Comp; Texas Farm Bureau Mutual Insurance Company; Marshall Systems Technology, Inc.; U.S. Interactive, Inc.; URAPI, Inc.; D.B. Stringfellow, Jr.; Dallas Computer Information Systems; ISO Claims Service, Inc. d/b/a Insurance Information Exchange; Acxiom Corporation and Acxiom Risk Mitigation, Inc.; TeleCheck Services, Inc.; Chex Systems, Inc.; Carfax, Inc.; Jon Latorella d/b/a Locateplus Holding Corporation; Certegy Check Services, Inc.; ImpactInfo, Inc.; WishList, LLC; and Just Texas

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

LIST OF PARTIES ii

TABLE OF CONTENTS iv

TABLE OF APPENDICES vi

TABLE OF CITED AUTHORITIES vii

OPINIONS BELOW 1

STATEMENT OF JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 1

1. Nature of the Case 1

2. Course of Proceedings and Disposition Below 2

3. Statement of Facts 3

REASONS FOR GRANTING THE PETITION 7

Table of Contents

Page

1. Petitioners' Drivers Privacy Protection Act claims against Respondents should not have been dismissed for failure to state a claim upon which relief could be granted. 8

   A. The Reseller Respondents violated the DPPA by knowingly obtaining Petitioners' personal information from a motor vehicle record for a purpose not permitted under the Act, i.e., the obtainment of personal information contained in motor vehicle records for purposes of resale or redisclosure. 10

   B. The Non-Seller Respondents violated the DPPA by knowingly obtaining Petitioners' personal information from a motor vehicle record for a purpose not permitted under the Act, i.e., the bulk obtainment of personal information contained in motor vehicle records for purposes of Respondents' convenience or cost saving or for Respondents' continued use, in a database or otherwise, as a business resource or in the conduct of ordinary business activities. 27

2. Petitioners Possessed The Requisite Constitutional Standing Required To Bring Their Driver's Privacy Protection Act Claims Against Respondents. 33

CONCLUSION 36

TABLE OF APPENDICES

APPENDIX A — DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT FILED JULY 14, 2010 ..... 1a

APPENDIX B — FINAL JUDGMENT OF THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF TEXAS MARSHALL DIVISION DATED OCTOBER 16, 2008 AND FILED NOVEMBER 4, 2008 ..... 33A

APPENDIX C — FINAL JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, MARSHALL DIVISION DATED OCTOBER 1, 2008 AND FILED OCTOBER 10, 2008 ..... 35a

APPENDIX D — JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, MARSHALL DIVISION DECIDED SEPTEMBER 8, 2008 AND FILED SEPTEMBER 9, 2008 ..... 37a

APPENDIX E— RELEVANT STATUTORY PROVISIONS 58a

TABLE OF CITED AUTHORITIES

Page

CASES

Brown v. Gardner,
513 U.S. 115 (1994) 17

Davis v. Michigan Dept. of Treasury,
489 U.S. 803 (1989) 16

Food and Drug Admin. v. Brown & Williamson Tobacco Corp.,
529 U.S. 120 (2000) 17

FTC v. Ivandel Brothers, Inc.,
359 U.S. 385 (1959) 16

Gustafson v. Alloyd Co.,
513 U.S. 561 (1995) 16

In re Imagitas, Inc.,
2008 U.S. Dist. LEXIS 29183
(M.D. Fla., April 9, 2008) 15

Kehoe v. Fid. Fed. Bank & Trust,
421 F.3d 1209 (11th Cir. 2005)
cert. denied, 547 U.S. 1051 (2006) 14

Linda R.S. v. Richard D.
410 U.S. 614 (1973) 34

Locate.Plus.Com, Inc. v. Iowa Dept. of Transp.,
650 N.W.2d 609 (Iowa, 2002) ..... *passim*

Cited Authorities

Page

Lujan v. Defenders of Wildlife,
504 U.S. 555 (1992) 33, 34, 35, 36

Parus v. Cator,
2005 U.S. Dist. LEXIS 20183
(W.D. Wis. Sept. 14, 2005) 34

Pilcher v. UNITE,
542 F.3d 380 (3rd Cir. 2008) 34

Reno v. Condon,
520 U.S. 141 (2000) 8

Roberts v. Source for Pub. Data,
2008 U.S. Dist. LEXIS 100628
(W.D. Mo., Dec. 12, 2008) ..... *passim*

Russell v. Choicepoint Serv., Inc.,
300 F. Supp. 2d 450 (E.D. La. 2004) ..... *passim*

Russell v. Choicepoint Serv., Inc.,
302 F. Supp. 2d 654 (E.D. La. 2004) ..... *passim*

Thomas v. George, Hartz, Lundeen, Fulmer, Johnstone, King, and Stevens, P.A.,
525 F.3d 1107 (11th Cir. 2008) 10

United States v. Gonzales,
520 U.S. 1 (1997) 15

Warth v. Seldin,
422 U.S. 490 (1975) 34

Cited Authorities

Page

FEDERAL STATUTES

18 U.S.C. § 2721 ..... *passim*

18 U.S.C. § 2722 ..... *passim*

18 U.S.C. § 2724 ..... *passim*

18 U.S.C. § 2725 ..... 1, 2, 30

FEDERAL RULES

Fed. R. Civ. P. 12(b)(1) 3, 7, 8, 35

Fed. R. Civ. P. 12(b)(6) 3

STATE STATUTES

Tex. Transp. Code § 521.050 5

OTHER AUTHORITIES

183 ALR Fed. 37 § 2 8

BLACK'S LAW DICTIONARY 1078 (6th ed. 1990) 23

Webster's II New College Dictionary 756 (Margery S. Berube *et al.* eds. 1995) 23

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is reported at 612 F.3d 325 (5th Cir. 2010) and is reprinted in Appendix A. The opinion of the district court was not reported. It is reprinted in Appendix D and may also be accessed at 2008 U.S. Dist. LEXIS 115940 (E.D. Tex. Sept. 8, 2008).

STATEMENT OF JURISDICTION

This petition seeks review of the July 14, 2010 judgment and opinion of the Fifth Circuit in consolidated cause no. 08-41083. No petition for rehearing or petition for rehearing en banc was sought by Petitioners. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves claims for relief brought by Petitioners against Respondents for violations of the Driver's Privacy Protection Act, 18 U.S.C., Chapter 123, §§ 2721 – 2725. The full text of the Driver's Privacy Protection Act is reprinted in Appendix E.

STATEMENT OF THE CASE

1. Nature of the Case

This proceeding arises from six separate cases filed as class actions by Petitioners alleging violations of the Driver's Privacy Protection Act ("DPPA"), 18 U.S.C.,

Chapter 123, §§ 2721–2725 by Respondents. After consolidation of these cases, Respondents filed a Consolidated Motion to Dismiss and the district court granted this motion; finding that Petitioners had failed to state a claim for relief under the DPPA and that Petitioners also lacked standing to bring these actions. Petitioners appealed the district court's order of dismissal and the Fifth Circuit affirmed the dismissal of Petitioners' DPPA claims.

2. Course of Proceedings and Disposition Below

Petitioners[1] instituted these actions in the United States District Court for the Eastern District of Texas against more than seventy-five entities in the six consolidated cases alleging similar violations of Petitioners' statutory privacy rights created and protected by the DPPA. (R-01, pgs. 68-88, R-13, pgs. 30-51, R-14, pgs. 30-51, R-17, pgs. 49-75, R-18, pgs. 48-73, R-410, pgs. 17-40)[2] After consolidating all six DPPA actions into the lead case the district court ordered each Petitioner to file a statement of DPPA violations ('Statement of Violations") specifically stating the basis for their claims against each individual Respondent arising out of the alleged obtainment, disclosure or use of that Petitioner's information from the Texas state

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1. Petitioners brought all six consolidated DPPA actions.

2. Each of the six DPPA actions had its own original appellate record. Accordingly, references to the record on appeal will be denoted by using "R" coupled with the last two (or three) digits of the case number followed by a page number. References to Petitioner's Appendix will be denoted by using "App." with an alphabetic and/or page reference.

motor vehicle records for a purpose not permitted under the DPPA. (R-01, pgs. 697-98, 702) Respondents were allowed to respond to the Statement of Violations and also given leave to re-urge any pending motions to dismiss based on that response. (R-01, pgs. 697-98) The district court also permitted Petitioners limited discovery in the form of interrogatories specific to each Respondent inquiring as to a particular Respondent's reason for obtaining the information at issue. (R-01, pg. 698)

After this rudimentary discovery was exchanged most Respondents joined in filing a Consolidated Motion to Dismiss. (R-01, pgs. 697) After the close of briefing, the district court entered a Judgment granting the Consolidated Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6) and 12(b)(1). (App. D) Petitioners thereafter appealed the dismissal of their cases and the Fifth Circuit affirmed the ruling of the district court holding that Petitioners had failed to state a claim upon which relief could be granted. (App. A) Because of the dismissal of Petitioners' cases for failure to state a claim, the Fifth Circuit declined to address the district court's dismissal of Petitioner's claims pursuant to Fed. R. Civ. P. 12(b)(1) for lack of standing. (App. A, pgs. 29a-30a)

3. Statement of Facts

Petitioners alleged in all six DPPA actions that they were holders of Texas drivers' licenses or identification cards and that each Petitioners' "personal information", as that term is defined in the DPAA, was maintained by the state of Texas in connection with its issuance of drivers' license or identification cards and/or

registration of motor vehicles.[3] (R-01, pg. 735) Petitioners further alleged that each individual Respondent violated section 2721 of the DPPA by either improperly obtaining or using various groups of Petitioners' "personal information". (R-01, pg. 735) In 1999 Congress changed the DPPA's consent-to-release information procedures from an "opt-out" to an "opt-in" system. In that regard, Petitioners' complaint alleged that:

> Texas law does not provide for an "opt-in" procedure as described in the 1999 amendments to the DPPA. In fact, Texas does not obtain express consent from any driver. Instead, the State of Texas only sells "personal information" from a motor vehicle record to "persons" who certify that they have a lawful purpose for the information (other than for direct or mass marketing) and/or have obtained the specific written consent of the Texas driver or identification card holder for the release of their information. Once a "person," as that term is defined by the DPPA, certifies to the State of Texas that they have a lawful purpose for *some* personal information and/or have obtained any requisite consent (and agrees to indemnify the State of Texas for any damages that State might incur by this procedure), the State of Texas, through its Department of Public

3. The definition of the proposed class Petitioners sought to represent in these cases is forth in the Fifth Circuit's opinion (App. A, pgs. 7a-8a, n.2)

> Safety, provides that person with a copy of the State's *entire database* of names, addresses and other personal information – some twenty (20) million plus residents of the State of Texas.

(R-01, pgs. 105-106) Petitioners claimed that each Respondent purchased the entire database of names from the Texas Department of Public Safety and that all Respondents signed a contract with the state of Texas whereby they certified to the state that they have a proper purpose for obtaining each piece of personal information and/or have obtained the requisite written consents.[4] (R-01, pg. 106)

Petitioners additionally alleged that although some of the Respondents may have had a permissible use under the DPPA for obtaining "personal information" for some of the people in the database, Respondents did not have a permissible purpose to obtain all twenty million names located in the Texas database. (R-01, pg. 106) Petitioners claimed that after the effective date of the 1999 amendment to the DPPA (June 1, 2000), Respondents unlawfully obtained the "personal information" of individuals from the Texas "motor vehicle records" in violation of the DPPA, in that Respondents' obtainment and use of this "personal information" was not for a purpose authorized by the

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4. Texas allows individuals and companies to purchase magnetic tapes of its driver's license records. TEX. TRANSP. CODE §521.050. The opinion of the Fifth Circuit recites the pertinent sections of the statutes and administrative procedures provided by the state of Texas for obtaining the driver's license records of its citizens. (App. A, pgs. 8a-9a, n.3)

DPPA. (R-01, pg. 107) As a result, Petitioners sought actual, liquidated and punitive damages, equitable relief and attorney fees and costs pursuant to §2724(b). (R-01, pgs. 109-110)

Respondents, although comprised of varying types of business organizations, were broken down by the parties (and later the district court and the Fifth Circuit) into two distinct categories: (1) those who obtain information directly from the state of Texas for their own use ("Non-Sellers")[5], and (2) those who obtain information from the state of Texas solely for the purpose of resale to others ("Resellers").[6] (App. A, pg. 17a) As to the Resellers, Petitioners alleged that they were liable because the DPPA does not permit disclosure to a nonuser who only obtains the information in order to redisclose it to third parties for use under a permitted purpose, i.e., that resale of protected information is not a permissible purpose for obtainment under the DPPA. (R-01, pg. 745) Petitioners alleged that the Non-Sellers were liable because, although they may have a permissible use under the DPPA for obtaining some limited "personal information" from the Texas Department of Public Safety database, the bulk obtainment of personal information contained in motor vehicle records for purposes of Respondents'

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5. Respondents referred to herein as "Non-Sellers" (or "Non-Resellers" by the Fifth Circuit) are identified by the district court in its Judgment granting the Consolidated Motion to Dismiss. (App. D, pgs.39a-40a, n.1)

6. Respondents referred to herein as "Resellers" are identified by the district court in its Judgment granting the Consolidated Motion to Dismiss. (App. D, pg. 40a, n.2)

convenience or cost saving or for Respondents' continued use, in a database or otherwise, as a business resource or in the conduct of ordinary business activities is not a permissible purpose for obtaining data protected by the DPPA. (R-01, pg. 736-37) The district court found that Petitioners' allegations against both the Resellers and the Non-Sellers failed to state a claim for relief under the DPPA. Based on its analysis of Respondents' Rule 12(b)(6) challenges to Petitioners' claims for relief, the district court also granted Respondents' Consolidated Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(1), finding that Petitioners failed to possess the requisite standing necessary to bring these claims. In specific, the district court held that Petitioners had not shown they suffered an "injury-in-fact", had not plead a causal connection between the alleged violations and the alleged harm, and had not demonstrated redressability. (App. D, pg. 56a)

REASONS FOR GRANTING THE PETITION

This Court should grant this petition in order to correct the Fifth Circuit's erroneous construction of the DPPA that resulted in the dismissal of Petitioners' actions on the basis that they failed to state a legally cognizable claim for relief under §2724(a) of the DPPA. Contrary to the Fifth Circuit's holding, the Resellers are not "authorized recipients" of personal information and their practice of purchasing the entire Texas motor vehicle record database for purposes of resale or disclosure to others is not a permissible purpose enumerated in the DPPA for obtaining this protected personal information. Also contrary to the Fifth Circuit's holding, the Non-Sellers' practice of purchasing the

entire Texas motor vehicle record database for its own convenience or continued use is simply not a permissible purpose enumerated in the DPPA for obtaining a driver's protected personal information. As to Respondents' standing challenges brought pursuant to Fed. R. Civ. P. 12(b)(1), Petitioners' adequately alleged the requisite "injury-in-fact – the invasion of their privacy interest in the personal information contained in their individual motor vehicle records caused by impermissible obtainment of those records by Respondents – necessary to confer standing to bring these actions and this Court should recognize that fact.

1. Petitioners' Drivers Privacy Protection Act claims against Respondents should not have been dismissed for failure to state a claim upon which relief could be granted.

The DPPA was enacted in response to several well-publicized incidents in which criminals had used publicly available motor vehicle records to identify, stalk and sometimes kill their victims. (R-01, pgs. 103-104) Following these incidents, public concern grew over the availability of personal information maintained by state DMVs. (App. D, pg. 41a) Additionally, Congress was concerned with the practice by many states of selling personal information maintained by DMVs to businesses and marketers. Citizens were being flooded with junk mail and unwanted solicitations. *Reno v. Condon*, 520 U.S. 141, 143-144 (2000); 183 ALR Fed. 37 §2. To address these concerns, Congress enacted the DPPA. The DPPA is structured such that §2721(a) provides the general prohibition on the release and use of motor vehicle information, whereas section 2721(b) enumerates the specific exceptions to the general prohibition.

The DPPA makes it unlawful for a state DMV, and "any officer, employee, or contractor thereof" to "knowingly disclose or otherwise make available to any person or entity personal information...about any individual obtained by the department in connection with a motor vehicle record." 18 U.S.C. § 2721(a)(1). The DPPA also prohibits a private actor from "knowingly obtain[ing], disclos[ing], or us[ing] personal information, from a motor vehicle record, for a purpose not permitted under [section 2721 (b) of this chapter]." 18 U.S.C. § 2724(a). While the DPPA generally prohibits a state from disclosing personal information, the statute enumerates fourteen "permissible uses" for which personal information may be disclosed.[7] The DPPA also provides for resale or redisclosure of personal information obtained by "authorized recipients" in certain circumstances. *See* 18 U.S.C. § 2721(c)

Section 2722(a) of the DPPA makes it unlawful for any person to knowingly obtain or disclose personal information from a motor vehicle record, for any use not permitted under section 2721(b). Section 2722(a) does not by itself create civil or criminal liability. It merely describes what conduct is wrongful under the DPPA. Section 2724(a), in turn, provides the standard for civil liability. The civil remedies available to redress violations of the DPPA include, inter alia, actual damages, but not less than liquidated damages in the amount of $2,500, injunctive relief, attorneys fees and costs. 18 U.S.C. §2724(b).

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7. *See* App. E, pgs. 59a-61a, for a complete listing of the fourteen "permissible uses" for which personal information may be disclosed under §2721(b) of the DPPA.

In a straightforward fashion, section 2724(a) sets forth three elements giving rise to DPPA liability, i.e., that a defendant (1) knowingly obtained, disclosed or used personal information, (2) from a motor vehicle record, (3) for a purpose not permitted. *Thomas v. George, Hartz, Lundeen, Fulmer, Johnstone, King, and Stevens, P.A.*, 525 F.3d 1107, 1111 (11th Cir. 2008). The plain meaning of the third factor is that it is only satisfied if shown that the obtainment, disclosure, or use was not for a purpose enumerated under § 2721(b). *Id.*

A. The Reseller Respondents violated the DPPA by knowingly obtaining Petitioners' personal information from a motor vehicle record for a purpose not permitted under the Act, i.e., the obtainment of personal information contained in motor vehicle records for purposes of resale or redisclosure.

As set forth previously, Petitioners alleged that the Reseller Respondents were in violation of the DPPA because they impermissibly obtained Petitioners' personal information for the purpose of reselling that data to third parties when those Resellers were not themselves "users" of the information. (R-01, pg. 745) The district court dismissed those allegations for failure to state a claim for relief primarily on the reasoning drawn from the *Russell* decisions.[8] In conducting its analysis, the district court initially determined that the DPPA "clearly and unambiguously permits '[a]n

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8. *See Russell v. Choicepoint Serv., Inc.*, 300 F. Supp. 2d 450 (E.D. La. 2004) ("*Russell I*"); *Russell v. Choicepoint Serv., Inc.*, 302 F. Supp. 2d 654 (E.D. La. 2004) ("*Russell II*").

authorized recipient of personal information...[to] resell or redisclose the information.' 18 U.S.C. § 2721(c). (App. D, pg. 51a) The district court then found that the only limitation placed on the term "authorized recipients" is that the information may be resold or redisclosed "only for a use permitted under subsection (b)." (App. D, pg. 51a) As such, the district court concluded that "[t]he DPPA does not require an 'authorized recipient' to also be an 'authorized user'. (App. D, pg. 51a) The district court, citing *Russell I*, 300 F. Supp. 2d at 455-56 and *Russell II*, 302 F. Supp. 2d at 654, held that "[b]y using the term "authorized recipients" instead of "authorized users" or "permissible users," Congress anticipated that entities like the Resellers would obtain drivers' personal information from DMVs solely for the purpose of redistributing the information to persons with permissible uses." (App. D. pg. 52a)

The district court then held that Petitioners could not maintain their DPPA claim against the Resellers for improper obtainment under 28 U.S.C. 2724(a) without also alleging an accompanying impermissible use because the DPPA allows "authorized recipients" to obtain "personal information" solely for purposes of resale to third parties with permissible uses. (App. D, pg. 54a) Having interpreted the DPPA in that (erroneous) fashion, the district court then dismissed Petitioners' improper obtainment claims against the Resellers because Petitioners "failed to allege any facts indicating an impermissible use of the 'personal information' obtained by Resellers." (App. D, pg. 54a)

In affirming the district court's ruling that Petitioners had failed to state an obtainment claim

under the DPPA, the Fifth Circuit held that "the plain language of 18 U.S.C. §2721 allows resale of DMV records to one who is authorized and proposes to make actual use thereof as permitted under section 2721(b) notwithstanding that the seller does not actually use or intend to use the records before resale." (App. A, pg. 30a) This holding was based on the Fifth Circuit's conclusion that the "only reasonable construction of 'authorized recipient' requires no actual use. Instead, an authorized recipient is authorized to resell to individuals for one or more of the specific purposes under section 2721(b)". (App. A, pg. 26a) In reaching this result the Fifth Circuit essentially adopted the faulty analysis of both the district court and the lower court in *Russell I*.

The *Russell I* and *II* decisions relied upon by both the Fifth Circuit and the district court unequivocally hold that the DPPA permits an entity to obtain driver's license data solely for the purpose of reselling that data to others for a permissible use. In reaching this conclusion the lower courts in the *Russell* decisions focused on the term "authorized user" as found in section 2721(c); the specific provision of the DPPA regarding resale of data. The defendants in the *Russell* cases argued that the state of Louisiana had "authorized" them to resell data and thus they had obtained the data for a permissible purpose – to resell it. In contrast, the plaintiffs in the *Russell* cases argued that the term "authorized recipient" meant one who was authorized *by the DPPA* to receive the data, i.e. someone who had a permissible purpose under section 2721(b) for obtaining the data. *Russell I* noted that the term "authorized recipient" was not defined by the DPPA and

concluded that the Act must be referring to some undefined authorization process set up by each individual state. *Russell I*, 300 F. Supp. 2d at 457.

A close examination of the *Russell I* court's analysis, however, reveals a glaring problem. First, the court in *Russell I* noted that authorized means "marked by authority . . . [or] sanctioned by authority. The court next notes an example of the usage of the term authorized as being a "city agency that authorizes construction projects." *Id.* Petitioners agree that this is *one* common use for authorized, but hardly the only one or even the best one. From here, the court in *Russell I* makes a quantum leap by concluding that Congress could have only been referring to some undefined, unspecified state created recipient authorization process. *Id. Russell I* reached this puzzling conclusion despite the presence of other language in section 2721(c) that clearly demonstrates the term "authorized recipient" refers to persons who are authorized by the DPPA *itself* to obtain personal information contained in motor vehicle records. Statutes commonly "authorize" certain actions and the DPPA is no different. A few phrases taken from section 2721(c) illustrate this point:

> An ***authorized recipient . . . (except a recipient under subsection (b)(11) or (12))*** may resell or resdisclose . . .
>
> An ***authorized recipient under subsection (b)(11)*** may resell or redisclose . . .
>
> ***An authorized recipient under subsection (b)(12)*** may resell or redisclose . . .

> Any ***authorized recipient (except a recipient under subsection (b)(11))*** that resells or rediscloses . . .

In four separate instances within a single paragraph, the DPPA makes reference to a person being an authorized recipient ***under*** another specific provision of the DPPA. One could not ask for a clearer statement to guide a court in understanding the meaning of the term "authorized recipient". The plain language of section 2722(a) makes it unlawful for a person to "obtain . . . personal information . . . for any use not permitted under §2721(b)". **Obtainment of personal information solely for purposes of resale is not identified by §2721(b) as a permitted use of protected motor vehicle record information and it is therefore unlawful and in violation of the DPPA.**

Section 2721(c) simply states that persons who are allowed to receive motor vehicle records under the DPPA are also allowed to sell those records, so long as they make sure that the vendees of the data are themselves obtaining the data for a permissible use. The *Russell I* court's holding that the wording of section 2721(c) itself creates a right to purchase motor vehicle records solely for the purpose of resale, independent of the permissible uses outlined in section 2721(b), is an erroneous construction of this statute and is contrary to the plain and ordinary meaning of section 2721(c). *See Kehoe v. Fid. Fed. Bank & Trust*, 421 F.3d 1209, 1212 (11th Cir. 2005) cert. denied, 547 U.S. 1051 (2006) (interpreting the DPPA: "In construing a statute, we must begin, and often should end as well, with the language of the statute itself because we presume that

Congress said what it meant and meant what it said.") (quotation omitted). If the plain language of a statute evidences its meaning, it is not necessary to consider its legislative history, including the significance of remarks of sponsoring legislators and the construction and interpretation given similar legislation. *In re Imagitas, Inc.*, 2008 U.S. Dist. LEXIS 29183 at *17 (M.D. Fla., April 9, 2008) citing *United States v. Gonzales*, 520 U.S. 1, 6 (1997) ("Given the straightforward statutory command, there is no reason to resort to legislative history.").

In contrast with the court's strained misconstruction of section 2721(c) in *Russell I*, the Iowa Supreme Court in *Locate.Plus.Com, Inc. v. Iowa Dept. of Transp.*, 650 N.W.2d 609 (Iowa, 2002) undertook a thoughtful analysis of section 2721(c) in the context of the entire DPPA and concluded that the Act did not allow entities to obtain motor vehicle records solely for the purpose of resale. The court in *Locate.Plus.Com, Inc.* noted that the DPPA imposed a gate keeping function on state departments of motor vehicles.

> The language of the DPPA as a whole makes it plain that Congress. . . sought limited access to personal information in state motor vehicle records by both protecting citizens from the improper use of such information, while allowing access for legitimate purposes or uses. At the same time, it imposed a gate keeping function on the state departments of motor vehicles to exercise discretion to disclose personal information when used for the purposes described in subsection (b). *We*

> *think this approach taken by Congress to the dissemination of personal information in motor vehicle records contemplates that the person or entity requesting disclosure of the personal information also be the person or entity that will use the information for the statutory purpose.* Thus, non-consensual disclosure of information is permitted only for approved uses, and disclosure is not permitted if the requester is not seeking to use the information for the statutory purpose.

Id. at 616 (emphasis added)

The Iowa Supreme Court then held that a private reseller "must itself be an 'authorized user'" to be permitted access to DMV records. *Id.* The DDPA "does not permit disclosure to a nonuser, who only seeks information to redisclose it for use under a permitted purpose." *Id.* at 617. The Iowa Supreme Court's conclusion is bolstered by well-established rules of statutory construction – that the DPPA must be interpreted "as a symmetrical and coherent regulatory scheme,"[9] and "fit, if possible, all parts into an harmonious whole,"[10] and that the statute's words "must be read in their context and with a view to their place in the overall statutory scheme."[11] In other words, a court "should not confine itself to examining a particular

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9. *Gustafson v. Alloyd Co.*, 513 U.S. 561, 569 (1995).

10. *FTC v. Ivandel Brothers, Inc.*, 359 U.S. 385, 389 (1959)

11. *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989).

statutory provision in isolation. The meaning – or ambiguity – of certain words or phrases may only become evident when placed in context."[12] Respondents also claimed in the lower court that the DPPA uniquely regulated ultimate uses – not users. However, this concept completely reads the unlawful obtainment prohibition out of the DPPA. An exercise in statutory construction that requires the wholesale rejection of a clear violation of the DPPA (unlawful obtainment) in order to make a legal argument work is completely improper.[13]

Locate.Plus.com represented the unanimous opinion of all seven justices of the highest court of the state of Iowa. When asked to decide the specific question of whether the DPPA allows a person to obtain driver's license data from a state for the sole purpose of resale the Iowa Supreme Court concluded that it did not. The Fifth Circuit waved off the reasoning of *Locate.Plus.com*, first by observing that it was not binding precedent and, second, by concluding that "[j]ust because the statute allows only certain types of people to use the information does not mean that the statute limits *possession* to those same individuals. The text of the statute contemplates uses and users in the

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12. *Food and Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000); *Brown v. Gardner*, 513 U.S. 115, 118 (1994) ("Ambiguity is a creature not of definitional possibilities but of statutory context").

13. This is also why the "rule of lenity" analysis is unavailing. The meaning of the term "authorized recipient" as used in §2721(c) is not ambiguous. It clearly applies only to recipients that become authorized solely by virtue of obtaining information for a reason listed in §2721(b).

list of exceptions; it contemplates resellers in a different subsection. 18 U.S.C. § 2721(b), (c)." (App. A, pg. 27a, n.13) That conclusion merely twists the meaning of the DPPA to achieve the result the Fifth Circuit desired to reach in this case.

Assuming, *arguendo*, that *Russell I* and *II* are correct and a proper understanding of the term "authorized recipient" means that Congress chose to leave it up to the states to develop some authorization process by which to allow companies to obtain motor vehicle records solely for resale. What exactly did Congress mean by granting the states such authority? This supposed grant of authority to the states provides that: "An authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b)."

If this is in fact a grant of authority it is clearly written as a restriction solely upon the recipient's ability to resell the data in question. Congress simply limited the persons to whom "authorized recipients" can resell their data to – one who intends to use the data for an enumerated purpose. The statute does not say "a state may authorize certain individuals to obtain data for resale and those entities may resell or re-disclose the information only for a use permitted under subsection (b)" nor does the DPPA include other language directly authorizing entities or individuals to obtain motor vehicle record data for resale. Yet, that is how the *Russell* courts interpreted this phrase. So again, was this really what Congress meant by its wording of section 2721(c)?

The district court and the courts in *Russell I* and *II* rejected the notion that "authorized recipient" means a recipient who was authorized *by the provisions of the DPPA* to receive motor vehicle records. These courts insist that this provision refers to a grant of authority by a state or one of its agencies. But it would not make sense for this provision to refer to a situation where a state has simply insured that a recipient has obtained the driver's license data in accordance with the DPPA – i.e., where a state merely requires that a recipient certify that the recipient itself will use the data in accordance with the DPPA. If that were the case this provision would have no meaning separate from the meaning presented by Petitioners. However, according to *Russell I*, this provision refers to a state granting a person the authority to obtain the data solely to resell it, presumably by examining certain recipients and deciding which ones are sufficiently trustworthy to purchase data to resell it to others.[14] None of Respondent Resellers asserted in the lower court that they were "authorized recipients" as that term was construed by the district court and the *Russell* cases.[15] It was merely noted that the "Texas

14. *Russell I*. 300 F.Supp.2d 450 at 457 ("The inclusion of the term "authorized recipient" and the exclusion of any reference to "users" in DPPA § 2721(c) indicates an intent on behalf of Congress to delegate authorization to the states and thereby permit personal information resellers like ChoicePoint who are authorized by the state or its DMV *to obtain drivers' personal information for the purpose of redistribution* to persons with 'permissible uses.'")

15. *See* Consolidated Motion to Dismiss (R-01, pg. 933) ("Pursuant to that authority, the Texas DPS has determined that it may sell driver information in bulk to purchasers that certify a permissible intended use.")

DPS has determined that it may sell driver information in bulk to purchasers *that certify a permissible intended use*." (R-01, pg. 933)

As explained above, the Fifth Circuit's and the district court's analysis mirrors that of the *Russell* decisions, including the refusal to follow the interpretation of the DPPA crafted by the Iowa Supreme Court in *Locate.Plus.com*. Additionally, the Fifth Circuit refused to give any credence to the detailed construction of the DPPA set out in *Roberts v. Source for Pub. Data*, 2008 U.S. Dist. LEXIS 100628 (W.D. Mo., Dec. 12, 2008). The lower court in *Roberts* held that an "authorized recipient", as described in section 2721(c) of the DPPA, is a recipient that becomes authorized *only* by virtue of obtaining the information for a reason listed in section 2721(b) of the DPPA. *Id.* at *9-*10 (emphasis added). The plaintiffs in *Roberts* sued a Missouri public official and two private entities (Shadowcraft and Pubic Data) based on allegations that Shadowcraft had obtained a large database from the Missouri Department of Revenue containing information about plaintiffs, including their social security numbers, and then transferred this database to Public Data which then made the information, including the social security numbers, available for sale at its website, www.publicdata.com. *Id.* at *1. The *Roberts* plaintiffs alleged that these actions were in violation, *inter alia*, of their statutory privacy rights under the DPPA because section 2721(a)(2) prohibits the knowing disclosure of "highly restricted personal information," defined to include social security numbers, without the express consent of the person to whom the information pertains, unless one of four statutory exceptions applies. *Id.* at *4.

In response, the *Roberts* defendants contended that plaintiffs failed to state a claim for relief under the DPPA because they did not allege that defendants acted with an impermissible purpose for obtaining their information under the DPPA. *Id.* at *4. Specifically, defendants argued that plaintiffs' complaint failed to allege an essential element of a DPPA claim - that defendants obtained or disclosed plaintiffs' information for an impermissible purpose under the DPPA. Defendants contended that under the DPPA, companies are not prohibited from re-selling and re-disclosing information to individuals who have a permissible use, and therefore plaintiffs' allegations – that defendants' purpose in obtaining and disclosing the information was to provide the information for sale to the general public – cannot support a DPPA claim. *Id.* at *5-*6. The court in *Roberts* found defendants' arguments unavailing based on a plain reading of the statute. *Id.*

After the reviewing the entire statutory framework of the DPPA and specifically the four statutory exceptions to the general prohibition against obtaining or disclosing "highly restricted personal information"[16] the court in *Roberts* turned to an evaluation of defendants' contention that section 2721(c) of the DPPA allows for the re-sale or re-disclosure of personal information by a business entity; no matter the purpose for which that entity obtained the information, so long as the resale or redisclosure is to individuals who have a permissible purpose for obtaining the information under section 2721(b). *Id.* at *8. In rejecting this contention the court in *Roberts* explained that:

16. Those exceptions are located at § 2721(b)(1) (4) (6) and (9).

> [s]ection 2721(c) does ***not*** create an additional exception to the DPPA's general rule of non-disclosure; it simply provides that once an "authorized recipient" obtains the personal information, that person or entity may only re-sell or re-disclose that information if that resale or re-disclosure is also for a purpose permitted under section 2721(b). *See* 18 U.S.C. §§ 2721(b) and (c). While the DPPA does not define "authorized recipient," it is clear from the context in section 2721(c) that an authorized recipient is one who has received the information pursuant to one of the 2721(b) exceptions.

Id. at *8-*10 (emphasis in original). After carefully and thoroughly analyzing the wording of section 2721(c) the court in *Roberts* held that "[f]rom the context of section 2721(c), and the references therein to recipients being authorized under particular section 2721(b) exceptions, it is clear that a recipient becomes authorized only by virtue of obtaining the information for a reason listed in section 2721(b)." *Id.*

In reaching that determination, the court in *Roberts* expressly considered the holding in *Russell I* that had been brought to the court's attention by defendants. In rejecting the *Russell I* court's analysis, the court in *Roberts* held that:

> [t]he *Russell* court's interpretation of section 2721(c) is inconsistent with the plain language of the DPPA, which makes it unlawful for business entities to "obtain . . . personal

> information . . . for any use not permitted under section 2721(b)[.]" 18 U.S.C. § 2722. Section 2722's prohibition on ***obtaining*** information for any purpose other than one listed in section 2721(b) makes no sense if under section 2721(c) a business entity is allowed to ***receive*** personal information for the purpose of re-selling or re-disclosing it to others whose uses would fall under exceptions in section 2721(b) — a purpose for which there is no exception in section 2721(b). Congress could not have intended to prohibit ***obtaining*** personal information for a purpose not listed in section 2721(b) while at the same time authorizing the ***receipt*** of personal information by entities who wished to use the information in a way not contemplated by that section. The words ***obtain*** and ***receive*** both indicate that one has taken or acquired possession of some thing. BLACK'S LAW DICTIONARY 1078, 1268 (6th ed. 1990); *Webster's II New College Dictionary* 756, 924-925 (Margery S. Berube *et al.* eds. 1995). Thus, an "authorized recipient" is one authorized to receive (or obtain) something; one who is prohibited from obtaining something cannot also be an "authorized recipient" of it.

Id. at *10-*11 (emphasis in original). In sum, the court in *Roberts* concluded that *Russell I* misinterpreted section 2721(c) as allowing the states to "authorize" certain entities to obtain "motor vehicles records" solely to resell them.

Citing *Locate.Plus. Com*, the court in *Roberts* observed that Congress could have included an additional exception in section 2721(b) to allow business entities to obtain highly restricted personal information for the purpose of re-selling or re-disclosing it to others with permissible uses but that it did not do so. *Id.* at *11. Because there is no such exception, obtaining personal information for this purpose is not permitted under the DPPA. *Id.* at *12. The *Roberts* court also found that since section 2721(c) only allows "authorized recipients" to disclose personal information for a purpose permitted under section 2721(b), and because defendants were not "authorized recipients," their subsequent disclosure to others, no matter the reason, was not permitted under the DPPA. *Id.* citing 18 U.S.C. § 2721(c). Under this analysis, the court in *Roberts* found plaintiffs' allegations that defendants knowingly obtained and disclosed their highly restricted personal information from the Missouri Department of Revenue for the purpose of selling it to the general public adequately stated a claim for relief under the DPPA because that purpose was not among the four reasons entities may lawfully obtain or disclose such information under section 2721(b).

The *Roberts* court's analysis of section 2721(c)'s interplay with the remaining provisions of the DPPA provides a logical, reasoned and coherent construction of these sections and offers a proper meaning of the term "authorized recipient" that the Fifth Circuit should have followed instead of the erroneous construction contrived by the court in the *Russell* cases which was adopted by the district court in this case. However, the Fifth Circuit simply dismissed the

reasoning in *Roberts* by stating that it "makes a statutory construction argument that practically writes the reseller provision out of the statute" and that "reselling to an authorized actual user is not itself an actual use." (App. A, pg. 27a, n.13) Petitioners respectfully submit that these statements are not valid critiques of the reasoning in *Roberts* but merely conclusions arrived at by the Fifth Circuit in order to reach a desired result. Contrary to the Fifth Circuit's holding, its construction of the DPPA does not allow "authorized recipient" to mean something different than one who has a permissible actual use, does not give meaning to the language of section 2721(c) that refers to recipients "under" subsection (b) and does not alleviate Petitioners' concerns. (App. A, pg. 27a) The Fifth Circuit's cited example that an authorized recipient would be "under subsection (b)(12)," if the state gives him the data for the purpose of reselling it to a person who uses it for marketing in conformity with (b)(12) fundamentally misapprehends the nature of Petitioners' argument. The fact that Petitioners failed to allege that any Reseller was not an authorized recipient of their personal information simply begs the question. Plainly summarized, the statutory construction analysis undertaken by the court in *Roberts* leads to a correct interpretation of the DPPA while the Fifth Circuit's analysis leads to an interpretation that is at odds with actual wording of the DPPA and the purposes for which it was enacted.

Respondents also contended in the lower court that the purpose of the DPPA supports the concept that obtainment of personal information solely for the purpose of resale is allowed. Respondents recited a

litany of legitimate governmental and business needs for access to motor vehicle records and claimed that an artificial requirement that only record *users* may resell records obstructs those needs. Petitioners do not take issue with the fact that a person's private information may sometimes be useful to governments and business in discharging their respective functions. However, the DPPA sets forth ground rules as to how that information may be properly obtained and, as shown above, procurement of that information from Resellers are who are not also "authorized recipients" under the DPPA is a violation of the Act. The circumstances mandating that Resellers of driver's license information must also be record users of that data is not an artificial requirement engrafted onto the DPPA but is instead the way Congress chose to write the law. Whether the DPPA is a good law or bad law, or whether a proper interpretation of the statute leads to delay and a loss of convenience to data users is not the issue. The law must be applied as written unless changed by Congress or struck down by the courts. Here the better reasoned analysis of the language of the DPPA, as articulated by the courts in *Locate.Plus.com* and *Roberts*, leads to the conclusion that obtainment of protected data by entities solely for purposes of resale or redisclosure is impermissible under the DPPA. For that reason, this Court should review and reverse the Fifth Circuit's determination that Petitioners failed to state a claim for relief against the Reseller Respondents.

B. The Non-Seller Respondents violated the DPPA by knowingly obtaining Petitioners' personal information from a motor vehicle record for a purpose not permitted under the Act, i.e., the bulk obtainment of personal information contained in motor vehicle records for purposes of Respondents' convenience or cost saving or for Respondents' continued use, in a database or otherwise, as a business resource or in the conduct of ordinary business activities.

Petitioners stated violations of the DPPA by the Non-Sellers consisted of the fact that personal information from Petitioners' motor vehicle records were obtained by the Non-Sellers for an impermissible purpose —"to save [themselves] time and/or money by not having to go back to the State of Texas each time [they] need additional information" and "to avoid the inconvenience of having to go to the State each time [they] needed an additional customers' information." (App. D, pg. 49a) Petitioners' improper obtainment claims were keyed upon the Non-Sellers' choice to obtain the entire database (containing the personal information of over twenty million individuals) so as to allow for continued use of that information in the conduct of their ordinary business activities and for the purpose of maintaining an information database as a business resource; activities that were not enumerated permissible uses and were contrary to the DPPA's provisions.

The Fifth Circuit simply treated Petitioners' stated allegations against the Non-Sellers as a claim that the

DPPA *per se* does not allow the bulk obtainment of DMV records. (App. A, pg. 18a) However, the gravamen of Petitioners' claims against the Non-Sellers is not just a blanket attack on bulk obtainment of DMV records. If a given Non-Seller has a specific need to obtain more than one individual's personal information from a driving record for a permissible purpose that Non-Seller's obtainment of multiple individuals' DMV records at one time does not violate the DPPA. However, if that Non-Seller obtains the **entire** Texas DMV database it must have a corresponding permissible use for each Texan's personal information that resides in the database. Not one Non-Seller in this action has ever even attempted to claim that it has an actual use for the personal information of every licensed driver in the state of Texas. This is why the Fifth Circuit's lengthy discussion of whether or not the DPPA allows bulk obtainment of DMV records is extraneous to the claims Petitioners are asserting.

It is crucial to understand that the thrust of Petitioners' DPPA claims against the Non-Sellers is that the bulk obtainment or purchase of personal information contained in motor vehicle records simply for the purposes of either convenience or cost saving or for continued use in a database *is not a permissible purpose for obtaining data protected by the DPPA*. This is because a permissible purpose is required by the DPPA *for each individual motor vehicle record obtained*. By purchasing the entire Texas database, the Non-Sellers chose to avoid the inconvenience of having to go to the state each time they needed additional customers' information as many other entities do on a regular basis. By purchasing the entire Texas database, the Non-

Sellers also acquired continued and uninterrupted use and access to Petitioners' personal information (whether there was any need for that individual's information at the time it was obtained or at any time in the future) as part and parcel of the conduct of their ordinary business activities. These are simply impermissible purposes for obtaining data subject to the DPPA and properly state a claim against the Non-Sellers under the DPPA.

The argument advanced by the Non-Sellers and essentially adopted by both the district court and the Fifth Circuit boils down to a single premise: if the Non-Sellers had a proper purpose for obtaining *some* individual pieces of "personal information" from a state DVM database then the DPPA allows them to obtain *all* individual pieces of "personal information" from the millions of "motor vehicle records" residing in that state's database. Under this view of the DPPA, if a Non-Seller had a permissible purpose to obtain a single individual's personal information contained in a single motor vehicle record then that same Non-Seller would be authorized to purchase a state's entire DMV database containing many millions of other person's personal information in order to retrieve that one individual's motor vehicle record. The DPPA, however, regulates individual pieces of "personal information" and does not allow entities to purchase information in bulk for which they do not have a corresponding use for each piece of information obtained.

The DPPA regulates individual's "personal information" and individuals' "motor vehicle records." The opening sections of the DPPA provide that "State departments of motor vehicles . . . shall not knowingly disclose . . .

> (1) *personal information . . . about any individual* obtained by the department in connection with *a motor vehicle record.*
>
> (2) *highly restricted personal information . . . about any individual* obtained by the department in connection with *a motor vehicle record.*[17]

The DPPA proceeds to define "motor vehicle records" as follows:

> (1) *"motor vehicle record"* means any record that pertains to *a motor vehicle operator's permit*[18]

"Personal information" is also defined by the DPPA as follows.

> (3) *"personal information"* means information that identifies *an individual*, including an *individual's photograph*, social security number, ...[19]

Every emphasized term is in the singular. Congress never refers to "motor vehicles records;" it is invariably *a* motor vehicle record. Congress does not use the terms individuals or drivers in the plural. The DPPA invariably refers to *an individual* or *a driver.* The section of the

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17. 18 USCA § 2721(a)(emphasis added).

18. 18 USCA § 2725 (emphasis added).

19. *See id.* (emphasis added).

DPPA imposing civil liability for improper obtainment of a motor vehicle record is also in the singular.

> *Cause of action.* – A person who knowingly obtains, discloses or uses personal information, from *a motor vehicle record*, for a purpose not permitted under this chapter shall be liable to the individual to whom the information pertains, who may bring a civil action in a United States district court.[20]

This language plausibly demonstrates that Congress, instead of permitting unfettered bulk access to motor vehicle records, sought to regulate individual motor vehicle records and the private personal information contained within them.

Although there is no provision in the DPPA that affirmatively forbids bulk obtainment of personal information, the sole DPPA provision that deals with the use of information for bulk distribution requires the express consent of the relevant individual. Section 2721(b)(12) provides that "'Personal information' . . . *may be disclosed* . . . [f]or bulk distribution for surveys, marketing or solicitations *if the State has obtained the express consent of the person to whom such personal information pertains.*" (emphasis added). Section 2721(b)(12) is the only provision of the DPPA that expressly *allows* a state to distribute its entire DMV database. No other provision of the DPPA refers to bulk distribution of information contained in a motor vehicle record. The fact that the DPPA limits the bulk use of

20. 18 USCA § 2724(emphasis added).

protected data to circumstances where the state has obtained the express consent of each individual whose information is obtained provides an indication of the disfavor in which Congress viewed bulk obtainment, use or disclosure of individual motor vehicle records.

The DPPA is clearly intended to regulate information at the individual level and only allows bulk distribution in a very limited context not relevant to this case. It is also clear that Congress was concerned with the fact that state DMVs were profiting from the sale of individual's private information. With the exception of section 2721(b)(12) there is absolutely no support for the proposition that the DPPA expressly allows the bulk sale of an individual's personal information contained in their individual motor vehicle record. The Fifth Circuit's interpretation of the DPPA to permit individual release, bulk release, or both of DMV records is plainly contrary the intent of the Congress to protect the personal information contained in a citizen's driver's license records by enacting the DPPA. (App. A, pg. 19a)

Non-Sellers are only allowed to obtain individual motor vehicle records for which they have a proper purpose. These permissible purposes are the uses specifically enumerated in subsections (1) through (14) of section 2721(b). The DPPA clearly provides for and requires a corresponding permissible use for each particular piece of information purchased. It is clear that Petitioners properly alleged a claim for relief against the Non-Sellers for lacking a permissible purpose to obtain their specific individual "motor vehicle records" containing their individual "personal information." This conclusion is based upon a proper interpretation of the

DPPA and understanding of its clear meaning. Accordingly, this Court should review and reverse the Fifth Circuit's decision dismissing Petitioners' claims for relief against the Non-Seller Respondents.

2. Petitioners Possessed The Requisite Constitutional Standing Required To Bring Their Driver's Privacy Protection Act Claims Against Respondents.

Although not addressed by the Fifth Circuit in its opinion, the district court erroneously granted Respondents' Consolidated Motion to Dismiss on the basis that Petitioners lacked the requisite standing to assert their improper obtainment claims under the DPPA. (App. D, pgs. 54a-56a) In *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) this Court set forth three elements that must be met to constitute the irreducible constitutional minimum of standing. First, the plaintiff must have suffered an "injury-in-fact"—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of, i.e., the injury has to be fairly traceable to the challenged action of the defendant and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *Id.* at 560-61 (internal quotations and citations omitted).

In dismissing Petitioners' claims for lack of standing the district court clearly misapplied *Lujan* in the context

of analyzing an improper obtainment claim under the DPPA. This Court stated in *Lujan* that "the plaintiff must have suffered an "injury in fact"-*an invasion of a legally protected interest.*" *Id.* at 560 (emphasis added). *Lujan* makes clear that the standing analysis is concerned with the violation of a "legally protected interest" – that is the injury required. In the case of the DPPA, Congress clearly recognized and created a legally protected interest to be free from having one's personal information contained in a motor vehicle record obtained without the requisite permissible statutory purpose. *See Pilcher v. UNITE*, 542 F.3d 380, 388 (3rd Cir. 2008) ("The DPPA provides redress for violation of a person's protected interest in the privacy of his or her motor vehicle records and the identifying information therein.") The DPPA is designed to protect personal information. *Parus v. Cator*, 2005 U.S. Dist. LEXIS 20183 at *13 (W.D. Wis. Sept. 14, 2005). Under the DPPA, "*improperly obtaining [a] plaintiff's information [is] an injury.*" *Id.* at *12 (emphasis added).

An injury may be found in the invasion of any interest that Congress has elevated to the status of an individual "legal right." *Linda R.S. v. Richard D.* 410 U.S. 614, 617, n.3 (1973). ("Congress may enact statutes creating legal rights, the invasion of which creates standing, even though no injury would exist without the statute.") Thus, it is well-established that an actual or threatened injury sufficient to meet Article III's case-or-controversy requirement "may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing." *Warth v. Seldin*, 422 U.S. 490, 500 (1975) (citations and internal quotation marks omitted).

Petitioners allege in this case that they had a legally protected privacy interest in not having the personal information contained in their individual motor vehicle records obtained without the requisite permissible statutory purposes enumerated in the DPPA. This is the legally protected interest specifically created by passage of the DPPA. Petitioners further allege that this legally protected privacy interest was invaded when Respondents obtained their motor vehicle records for purposes that were not authorized by the DPPA. Petitioners have further alleged that they are entitled to seek the remedies provided to them under the DPPA as redress for these alleged violations. These facts, for purposes of a Rule 12(b)(1) challenge, allege the requisite "injury-in-fact" necessary to confer Article III standing. *See also* App. A, pgs. 31a-32a, DENNIS, Circuit Justice, concurring)

Concerning the second element of standing in *Lujan*, Petitioners alleged a causal connection between the invasion of their DPPA protected privacy interests and the conduct of Respondents. Petitioners claimed that Respondents' actions in purchasing the Texas DMV database without a permissible purpose constituted an actionable privacy invasion that was fairly (and directly) traceable to Petitioners' claimed injury and was not the result of the independent action of a third party. As to the third element of standing in *Lujan*, a favorable decision on Petitioners' improper obtainment claims will definitely redress their injuries.

The standing analysis in this case is straightforward. The DPPA recognizes a legally protected interest in having one's private information free from unauthorized

obtainment by third parties. If a person's private data is in fact obtained by a third party that is not legally authorized to have it, an invasion of that legally protected interest occurs. In other words, Congress has said that the third party is not supposed to be in possession of that person's personal data but it nonetheless possesses the data. The person whose personal data has been obtained in violation of the DPPA has suffered a concrete injury because a third party is in possession of something it should not have, i.e., that person's personal, private information. The factual basis supporting Petitioners' standing to bring their personal DPPA actions mirrors this scenario and meets every element of the *Lujan* standing analysis. As such, the district court's ruling that Petitioners lacked standing to pursue their DPPA claims should be reviewed and reversed by this Court.

CONCLUSION

Based upon the foregoing reasons, Petitioners request the Court to grant this petition for writ of certiorari and review the decision of the Fifth Circuit in order to correct its faulty interpretation of the DPPA.

Dated: October 12, 2010

Respectfully submitted,

ANDY TINDEL
Counsel of Record
PROVOST UMPHREY LAW FIRM
112 E. Line Street
Suite 304
Tyler, Texas 75702
903-596-0900
atindel@andytindel.com

THOMAS M. COREA
THE COREA FIRM, P.L.L.C.
Renaissance Tower
1201 Elm Street,
41st Floor
Dallas, Texas 75270
214-953-3900

J. MARK MANN
THE MANN FIRM
300 West Main Street
Henderson, Texas 75652
903-657-8540

Counsel for Petitioners

APPENDIX

APPENDIX A — DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT FILED JULY 14, 2010

No. 08-41083

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

July 14, 2010, Filed

SHARON TAYLOR; JAMES DOUGLAS BOOKER; LOWRY BRILEY; TWILAH BROWN; JAMES D CLARY; ET AL,

Plaintiffs - Appellants

v.

ACXIOM CORPORATION; CHOICEPOINT PUBLIC RECORDS DATABASE TECH INC; CHOICEPOINT PUBLIC RECORDS, INC; CHOICEPOINT, INC; CHOICEPOINT SERVICES, INC; SEISINT, INC; LEXISNEXIS REED ELSEVIER, INC; CHEX SYSTEMS, INC, a Minnesota Corporation,

Defendants - Appellees

Appendix A

SHARON TAYLOR, on Behalf of Themselves and all others Similarly Situated; ET AL,

Plaintiffs - Appellants

v.

ACS STATE & LOCAL SOLUTIONS, INC, a New York Corporation; GLOBAL 360 BGS, INC, a Texas Corporation; GILA CORPORATION, a Texas Corporation; AMERICAN ELECTRIC POWER SERVICE CORPORATION, a New York Corporation; SOUTHWESTERN BELL TELEPHONE LP, a Texas Limited Partnership, doing business as Southwestern Bell Telephone Company; AMERICAN MUNICIPAL SERVICES CORPORATION; EUGENE R BUCCIARELLI; MICHAEL DINAPOLI,

Defendants - Appellees

SHARON TAYLOR, on Behalf of Themselves and all others Similarly Situated; ET AL,

Plaintiffs - Appellants

v.

TEXAS FARM BUREAU MUTUAL INSURANCE COMPANY, a Texas Insurance Company; INSURANCE TECHNOLOGIES CORPORATION, a Texas Corporation; SOFTECH INTERNATIONAL, INC, a Florida Corporation; GLOBE LIFE &

Appendix A

ACCIDENT INSURANCE COMPANY, a Deleware Insurance Company; HAWKEYE INSURANCE SERVICES, INC, a Texas Corporation; ISO CLAIMS SERVICES, INC, a Delaware Corporation, doing business as Insurance Information Exchange; UNITED TEACHER ASSOCIATES INSURANCE COMPANY, a Texas Insurance Company; SPARTAN INSURANCE COMPANY,

Defendants - Appellees

SHARON TAYLOR, on Behalf of Themselves and all others Similarly Situated; ET AL,

Plaintiffs - Appellants

v.

SAFEWAY, INC, a Deleware Corporation; HEB GROCERY COMPANY, LP, a Texas Limited Partnership; THE HEARST CORPORATION, a Delaware Corporation, doing business as Houston Chronicle; SAFETY-USA INSTITUTE, LLC, a Texas Limited Liability Company; U S INTERACTIVE, INC, a Texas Corporation; THE TALBOT GROUP, INC, a Texas Corporation; BACKGROUND INFORMATION SYSTEMS, INC, a Texas Corporation; CARFAX, INC, a Pennsylvania Corporation; IMPACTINFO, INC, a Texas Corporation; WISHLIST, LLC, Represented by Carolyn Lehamnn, Member ABC DATA; AMERICAN STUDENT LIST CO, INC; ARISTOTLE

Appendix A

INTERNATIONAL, INC; DONALD R BERLINER, JR; CONTINUEDED.COM, LLC; DENSPRI, LLC; DRIVER TRAINING ASSOCIATES, INC; FEDERATED RETAIL HOLDINGS, INC; HOUSEHOLD DRIVERS REPORT, INC; LEE FARISH COMPUTER SERVICES, INC; PARADISE DEVELOPMENT, INC; D B STRINGFELLOW, JR; TENANT TRACKER, INC,

Defendants - Appellees

SHARON TAYLOR, on Behalf of Themselves and all others Similarly Situated; ET AL,

Plaintiffs - Appellants

v.

BIOMETRIC ACCESS COMPANY; CETEGY CHECK SERVICES, INC; EMAGINENET TECHNOLOGIES, INC; REI DATA, INC, doing business as Landata Information Services, Inc; LML PAYMENT SYSTEMS CORPORATION; TELECHECK SERVICES, INC; ALLIED RESIDENT/EMPLOYEE SCREENING SERVICE, INC; U S INTERACTIVE, INC; ACXIOM RISK MITIGATION, INC; ADP SCREENING AND SELECTION SERVICES, INC; AMERICAN DRIVING RECORDS, INC; COE INFORMATION PUBLISHERS, INC; EXPLORE INFORMATION SERVICES LLC; FEDCHEX LLC; JON

Appendix A

LATORELLA; MARSHALL SYSTEMS TECHNOLOGY, INC; REALTIME-ID LP; SOURCE DATA, INC, Leslie Hanson for Deft; URAPI; PROPERTYINFO CORPORATION,

Defendants - Appellees

SHARON TAYLOR, on Behalf of Themselves and all others Similarly Situated; ET AL,

Plaintiffs - Appellants

v.

FREEMAN PUBLISHERS, INC; BAYOUNET.COM, INC; CUSTOMER CONTACT, INC; DEFENSIVEDRIVING.COM; CROSS-SELL, INC; INFONATIONS, INC; REALTY COMPUTER SOLUTIONS, INC, doing business as Real-Comp; THE SERVICE BUREAU; LIST MANAGEMENT SYSTEMS; JUST TEXAS; DOMININ ENTERPRISES; DATA BANK USA; JOE WINKLEN CONSULTING; NATIONAL STATISTICAL SERVICE CORPROATION; WARRANTY USA; RELIANT ENERGY, INC; TXU BUSINESS; DALLAS COMPUTER ASSOCIATES,

Defendants - Appellees

Appendix A

Appeal from the United States District Court
for the Eastern District of Texas

Before GARWOOD, DAVIS, and DENNIS, Circuit Judges. DENNIS, Circuit Judge, concurring.

Today, we decide whether the Driver's Privacy Protection Act (DPPA), 18 U.S.C., Chapter 123, §§ 2721-2725, allows states to turn over their entire drivers motor vehicle (DMV) database at the request of certain private entities. This case involves a class action seeking vast potential liquidated damages. For reasons stated below, we affirm the district court's dismissal of the action and hold that the DPPA affords states discretion to disburse DMV records for a permissible purpose under the statute.

This case began when the plaintiff-appellants, Sharon Taylor, et. al., filed six putative class action suits alleging violations of the DPPA against more than seventy-five defendants. The district court consolidated the six suits into the instant case. Most defendants joined in filing a Consolidated Motion to Dismiss pursuant to FED. R. CIV. P. 12(b)(6) (failure to state a claim), and 12(b)(1) (lack of subject-matter jurisdiction). The district court granted the motion and entered judgment dismissing plaintiff's suit with prejudice (including the *sua sponte* dismissal of the action as against defendants who had not joined the motion). The plaintiffs now appeal.[1]

1. We note that although JI Speciality Services, Inc. is listed in the caption as a party defendant-appellee, heretofore, on July 9, 2010, said JI Speciality Services, Inc., only, was dismissed from these appeals under 5TH CIR. R. 42(b) pursuant to the stipulation of plaintiffs-appellants and said JI Specialty Services, Inc.

Appendix A

STANDARD OF REVIEW

This court reviews *de novo* the grant of a motion to dismiss for failure to state a claim. *Kennedy v. Chase Manhattan Bank USA, NA*, 369 F.3d 833, 839 (5th Cir. 2004). Plaintiffs must plead enough facts to state a claim to relief that is plausible on its face. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 1974, 167 L. Ed. 2d 929 (2007). We take the facts the plaintiff pleads as true. *Id. at 1965. See also Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949-50, 173 L. Ed. 2d 868 (2009). The court evaluates a 12(b)(1) motion *de novo* as well. *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001).

BACKGROUND

Plaintiffs bring this class action against various defendants alleging misuse of DMV records in violations of the DPPA. *18 U.S.C. § 2721-2725*. The plaintiffs represent a putative class of individuals with drivers licenses issued in the State of Texas.[2] Upon certification

---

2. Specifically, the proposed class definition included:

Each and every individual in the State of Texas whose name, address, driver identification number, race and/or date of birth and/or sex are contained in motor vehicle records obtained by Defendants from the State of Texas's Department of Public Safety, without the express consent of such individuals, from June 1, 2000, through the date of judgment herein.

Excluded from the class are persons who have expressly authorized the State of Texas's Department of Public of Public Safety to provide third parties with their "personal information" for any purpose; those persons whose information

(Cont'd)

of a lawful purpose, Texas allows individuals and companies to buy magnetic tapes of drivers licence records. TEX. TRANSP. CODE. § 521.050.[3] The DPPA

(Cont'd)
was obtained for a permissible purpose defined by the DPPA; all employees, including, but not limited to, Judges, Magistrate Judges, clerks and court staff and personnel of the United States District Courts of the Eastern District of Texas, the United States Court of Appeals for the Fifth Circuit and the United States Supreme Court; their spouses and any minor children living in their households and other persons within a third degree of relationship to any such Federal Judge; and finally, the entire jury venire called to for jury service in relation to this lawsuit.

3. Section 521.050(a) provides:

> "(a) In addition to the provisions of this subchapter relating to the disclosure of driver's license information on an individual, the department [Department of Public Safety] may provide a purchaser with a magnetic tape of the names, addresses, and dates of birth of all license holders that are contained in the department's basic driver's license record file if the purchaser certifies in writing that the purchaser is eligible to receive the information under Chapter 730."

Section 730.002 of the TEX. TRANSP. CODE provides that:

> "The purpose of this chapter [Chapterr 730] is to implement 18 U.S.C. Chapter 123 [the DPPA] and to protect the interest of an individual in the individual's personal privacy by prohibiting the disclosure and use of personal information contained in motor vehicle records, except as authorized by the individual or by law."

(Cont'd)

regulates driver's license records that contain "personal information" defined to include the names, photographs, social security numbers, drivers license numbers, addresses, telephone numbers, and medical and disability information of individuals. 18 U.S.C. § 2725(3).

(Cont'd)

Under § 730.007 the requesting party is to provide assurances to the Department of Public Safety (DPS) that the information furnished will be used only for purposes that are lawful under the DPPA. Permitted disclosures under *§ 730.007* extend only to name, address, date of birth and driver's license number. § 730.007(b). The requestor must represent that use of personal information "will be strictly limited" to listed uses permitted under the DPPA (excluding marketing, solicitations and surveys or uses based on individual consent), including

> "(C) use in the normal course of business by a legitimate business or an authorized agent of the business, but only:
>
> (i) to verify the accuracy of personal information submitted by the individual to the business or the agent of the business; and
>
> (ii) if the information is not correct, to obtain the correct information, for the sole purpose of preventing fraud by, pursuing a legal remedy against, or recovering on a debt or security interest against the individual." § 730.007(a)(2)(C).

DPS regulations (37 TEX. ADMIN. CODE § 15.142) require a detailed form of agreement by the requestor, specifying, *inter alia*, each authorized purpose for which the records are requested and the like.

Plaintiffs allege that defendants acquired the challenged information in bulk from the Texas DPS. There is no allegation that such acquisition was other than in compliance with Texas law.

Plaintiffs allege that once a person certifies that they have a lawful purpose, the State of Texas provides magnetic tapes with its entire database of driver's license records information on all holders of a Texas driver's license. Like Texas, statutes (or regulations) in at least eleven other states expressly allow this type of bulk distribution.[4]

Plaintiffs argue that obtaining personal information in this manner violates the DPPA. *Section 2722(a)* provides:

> "(a) **Procurement for unlawful purposes.**—It shall be unlawful for any person knowingly to obtain or disclose personal information, from a motor vehicle record, for any use not permitted under *section 2721(b)* of this title."[5]

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4. ALA. ADMIN. CODE r. 810-5-1.485(6)(c)(1); ALASKA ADMIN. CODE tit. 2, § 92.200(c), *available* at http://www.legis.state.ak.us/basis/folioproxy.asp?url=http://wwwjnu01.legis.state. ak.us/cgi-bin/folioisa.dll/aac/query=[JUMP:'2+aac+92!2E200']/doc/[@1]?firsthit; ARIZ. REV. STAT ANN. § 28-455(E); COLO. REV. STAT. § 42-1-206(3.7)(a) (West 2004); DEL. CODE ANN. tit. 21, § 305(f)(2) (2005); GA. COMP. R. & REGS. 375-3-8.03(10)(a) (2009); 625 Ill. Comp. Stat. 5/2-123(a) (West 2008); Mich. Comp. Laws § 28.300(2), (3) (West 2004); N.H. Code. Admin. R. Ann. Saf-C 5202-08(a) (2009); N.Y. Veh. & Traf. Law § 202(4)(a)-(b) (McKinney 2009); W. VA. CODE § 91-8-7.14 (2009).

5. Section 2722(b) provides:

"(b) **False representation.** —It shall be unlawful for any person to make false representation to obtain any personal information from an individual's motor vehicle record."

(Cont'd)

The DPPA also provides a civil action against a "person who knowingly obtains, discloses or uses personal information from a motor vehicle record for a purpose not permitted under this chapter." 18 U.S.C. § 2724(a).[6] To that end, the DPPA lists several permissible uses in section 2721(b):

(Cont'd)

Section 2723 provides:

"***§ 2723.* Penalties**

(a) Criminal fine.—A person who knowingly violates this chapter shall be fined under this title.

(b) Violations by State department of motor vehicles.—Any State department of motor vehicles that has a policy or practice of substantial noncompliance with this chapter shall be subject to a civil penalty imposed by the Attorney General of not more than $ 5,000 a day for each day of substantial noncompliance."

We also note in passing that as § 2723(a) makes knowing violation of the DPPA a crime, and accordingly to the extent that violation of the DPPA is at issue in even a civil case, to the extent of ultimate ambiguity in the statute's meaning it must be construed under the rule of lenity. *See U.S. v. Thompson/Center Arms Co.*, 504 U.S. 505, 112 S.Ct. 2102, 2110, 119 L. Ed. 2d 308 (1992) (plurality opinion); *Crandon v. U.S.*, 494 U.S. 152, 110 S. Ct. 997, 1001-1002, 108 L. Ed. 2d 132 (1990).

6. Section 2724(b) provides:

"**(b) Remedies.**—The court may award—

(1) actual damages, but not less than liquidated damages in the amount of $ 2,500;

(Cont'd)

(1) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions.

(2) For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers.

(3) For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only—

(A) to verify the accuracy of personal information submitted by the

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(Cont'd)

(2) punitive damages upon proof of willful or reckless disregard of the law;

(3) reasonable attorneys' fees and other litigation costs reasonably incurred; and

(4) such other preliminary and equitable relief as the court determines to be appropriate."

individual to the business or its agents, employees, or contractors; and

(B) if such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.

(4) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State, or local court.

(5) For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.

(6) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims

investigation activities, antifraud activities, rating or underwriting.

(7) For use in providing notice to the owners of towed or impounded vehicles.

(8) For use by any licensed private investigative agency or licensed security service for any purpose permitted under this subsection.

(9) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under chapter 313 of title 49.

(10) For use in connection with the operation of private toll transportation facilities.

(11) For any other use in response to requests for individual motor vehicle records if the State has obtained the express consent of the person to whom such personal information pertains.

(12) For bulk distribution for surveys, marketing or solicitations if the State has obtained the express consent of the person to whom such personal information pertains.

> (13) For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains.
>
> (14) For any other use specifically authorized under the law of the State that holds the record, if such use is related to the operation of a motor vehicle or public safety.

Section 2721 goes on to provide:

> "(c) **Resale or redisclosure**.—an authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b)(11) or (12)). An authorized recipient under subsection (b)(11) may resell or redisclose personal information for any purpose. An authorized recipient under subsection (b)(12) may resell or redisclose personal information pursuant to subsection (b)(12)."[7]

---

7. Section 2721(c) concludes by stating: "Any authorized recipient (except a recipient under subsection (b)(11)) that resells or rediscloses personal information covered by this chapter must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request." *See also* TEX. TRANSP. CODE § 7303.013:

(Cont'd)

Appendix A

Plaintiffs complain that the defendants in the instant case, pursuant to the Texas statute, buy DMV records in bulk from the Texas DPS. These defendants do not use all of the records immediately. They maintain databases or resell the information. They potentially could use any record in the normal course of their business for a permissible purpose under the DPPA.

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> "(a) An authorized recipient of personal information may not resell or redisclose the personal information in the identical or a substantially identical format the personal information was disclosed to the recipient by the applicable agency.
>
> (b) An authorized recipient of personal information may resell or redisclose the information only for a use permitted under Section 730.007.
>
> (c) Any authorized recipient who resells or rediscloses personal information obtained from any agency shall be required by that agency to:
>
> > (1) maintain for a period of not less than five years records as to any person or entity receiving that information and the permitted use for which it was obtained; and
> >
> > (2) provide copies of those records to the agency on request.
>
> (d) A person commits an offense if the person violates this section. An offense under this subsection is a misdemeanor punishable by a fine not to exceed $ 25,000."

Similar requirements are stated in the recipient's agreement with the DPS. *See* 37 TEX. TRANSP. CODE § 15.143.

Appendix A

Plaintiffs do not complain that the defendants actually used any of the records for a purpose other than the ones listed in the DPPA. Instead, the plaintiffs complain that maintaining records not actually used for the defendants' stated purpose is itself an impermissible purpose under the statute. Stated another way, plaintiffs assert that buying the records in bulk with an expectation and purpose of valid potential use is not a permissible use under the DPPA.

The plaintiffs characterize their suit as being against two types of defendants: resellers and non-resellers of the drivers license records. Plaintiffs argue that the DPPA requires resellers to have themselves made some permissible use of the information before they may resell the information. Here, the resellers took the personal information and sold it to third parties without using the information themselves. The plaintiffs do not allege that the third parties used the personal information for a purpose not permitted under the DPPA. And, the plaintiffs argue that the non-resellers violated the act by obtaining the personal information for purposes of "convenience and cost saving," and for continued future use, and these purposes are not permissible uses under the DPPA. They argue that a permissible purpose is required by the DPPA for each item of personal information contained in the entire bulk database obtained.

Appendix A

ANALYSIS

I. Failure to State a Claim

The DPPA creates liability when three elements are met: (1) the defendant knowingly obtains, discloses or uses personal information; (2) from a motor vehicle record; and (3) for a purpose not permitted. 18 U.S.C. § 2724(a); *Thomas v. George, Hartz, Lundeen, Fulmer, Johnstone, King, and Stevens, P.A.*, 525 F.3d 1107, 1111 (11th Cir. 2008)."The plain meaning of the third factor is that it is *only* satisfied if shown that obtainment, disclosure, or use was not for a purpose enumerated under § 2721(b)." *Id.* (emphasis added). *See also Reno v. Condon*, 528 U.S. 141, 120 S.Ct. 666, 670, 145 L. Ed. 2d 587 (2000) (The section 2724 cause of action is for knowingly obtaining, disclosing, or using the information "for a use other than those specifically permitted by the DPPA").

A. Non-Resellers

We first address whether the non-resellers obtained personal information for a purpose not permitted under the DPPA. The non-resellers buy DMV records in bulk. Soon thereafter, they may use some of the records for a purpose permitted under the DPPA. The plaintiffs argue that as to the remaining records the non-resellers do not use them for a permissible purpose. In other words, the question is whether the statute allows bulk distribution of the records.

We hold that this type of bulk obtainment does not violate the DPPA. In interpreting statutes, this Court begins with the text of the statute. *Phillips v. Marine Concrete Structures,* 895 F.2d 1033, 1035 (5th Cir. 1990). Of the fourteen expressly listed permissible uses, only once does Congress limit a permissible use to *individual* motor records. 18 U.S.C. § 2721(b)(11) ("For any other use in response to requests for individual motor vehicle records if the State has obtained the express consent of the person to whom such personal information pertains."). And of these fourteen permissible uses, only once does Congress limit a permissible use to *bulk* distribution. 18 U.S.C. § 2721(b)(12) ("For bulk distribution for surveys, marketing or solicitations if the State has obtained the express consent of the person to whom such personal information pertains."). For the remaining twelve permissible uses, the statute seems to have more than one reasonable interpretation: individual release, bulk release, or both.[8] *See In re Rogers,* 513 F.3d 212, 226 (5th Cir. 2008) (an ambiguous statute is susceptible to more than one reasonable interpretation).

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8. Other than 2721(b)(11) and (b)(12), the list of permissible uses does not refer to bulk or individual records. The statute does say, however, that "[p]ersonal information . . . may be disclosed as follows:" before listing the permissible uses. 18 U.S.C. § 2721(b). Section 2725(3) states:

> "(3) 'personal information' means information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or

(Cont'd)

It does not make sense that Congress would expressly limit states to individual distribution with one permissible use if Congress intended to limit *all* of the permissible uses to individual distribution. If Congress intended only individual distribution, one would expect either Congress to expressly limit all uses or, at least, to remain silent on the matter. Likewise, if Congress intended only bulk distribution, it makes no sense to expressly limit one of the fourteen uses to bulk distribution and not the others. The text of the statute strongly indicates that it allows both individual and bulk distribution. Bulk distribution is limited in only the instance of use for surveys, marketing or soliciations (plaintiffs do not allege such use here). The plain inference is that Congress allowed bulk distribution for other uses permitted by *section 2721(b). Arif v. Mukasey, 509 F.3d 677, 681 (5th Cir. 2007)* ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.").

(Cont'd)

> disability information, but does not include information on vehicular accidents, driving violations, and driver's status."

Congress sets forth rules of construction that explain, unless context indicates otherwise, "words importing the singular include and apply to several persons, parties, or things." 1 U.S.C. § 1. It seems well established, however, that this particular cannon is rarely applied and only when doing so necessarily carries out the evident intent of Congress. *United States v. Hayes*, 129 S. Ct. 1079, 1085 n.5, 172 L. Ed. 2d 816 (2009) (refusing to apply the rule because it conflicts with congressional intent).

Appendix A

The purpose of the statute supports the conclusion that Congress intended bulk distribution. Representatives originally proposed the DPPA as a crime fighting measure. 139 CONG. REC. S15745-01, S15762 (1993) (Statement of Rep. Boxer). Congress originally passed it (as an amendment to the Crime Control and Law Enforcement Act of 1994) in response to the murder of actress Rebecca Schaeffer at the hands of a stalker. 140 CONG. REC. H2518-01, H2526 (1994) (Statement of Rep. Goss). This stalker used DMV records to find Schaeffer's unlisted home address. *Id.* The legislative history reflects the concern for victims of crimes committed using DMV records.[9] The totality of the legislative history clearly reflects that Congress did *not* intend to suppress legitimate business uses of motor vehicle records. Thus, Congressman James P. Moran, Eighth District of Virginia, the sponsor of the DPPA in the House, in his February 4, 1994 statement on the DPPA before the House Judiciary Committee Subcommittee on Civil and Constitutional Rights, explained:

> "*Careful consideration was given to the common uses now made of this information* and great efforts were made *to ensure that those uses were allowed under this bill.* Among those who will continue to have unfettered access are federal and state

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9. *E.g., The Driver's Privacy Protection Act of 1993: Hearing on H.R. 3365 Before the Subcomm. on Civil & Constitutional Rights of the H. Comm. on the Judiciary*, 103rd Cong. (1994) (Statement of Rep. Moran), 1994 WL 212698 (listing examples of violence committed after obtaining DMV records). None of these instances involved bulk distribution of DMV data.

governments and their contractors, for use in auto recalls, by businesses (such as an insurance company) to verify the accuracy of personal information submitted by a licensee, for use in any civil or criminal proceeding, in research activities, and in marketing activities as long as the individual has been given the opportunity to opt out. The *bill would allow DMVs to continue to sell DMV information in bulk* as long as every driver in that state had been given the opportunity to restrict the sale of their name *for marketing purposes*." (emphasis added). 1994 WL 212698 (F.D.C.H.) at 4.[10]

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10. The "opt out" provisions of the original legislation with respect to bulk distribution for the purpose of use in surveys, marketing or solicitations in § 2721(b)(12) (and the similar "opt out" provisions of § 2721(b)(11)) were changed to the "opt in" provisions now in § 2721(b)(11) and (12) by the October 1999 amendments to the DPPA. Public Law 106-69.113 Stat. 986 (October 9, 1999).

Congressman Moran's February 4, 1994 statement also explains the reason for restrictions on direct marketing use, viz:

> "Most states sell DMV information in list form with personal identifiers (name, address, and/or social security number) to direct marketers for commercial purposes, but only five have a working "opt-out" system (a system allowing licensees to restrict the sale of their personal information). . . .
>
> . . .

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Statements on the DPPA along the same lines were made by Congressman Moran and Congressman Gross on April 20, 1994 before the House. 140 Cong. Rec. H 2518-01, 1994 WL 140035 at 14, 15, 24.

Plaintiffs' reading of the DPPA leads to essentially absurd results. At a checkout line at a grocery store or similar establishment, when a customer wishes to pay by (or cash) a check, and presents a driver's license as identification, it is obviously wholly impractical to require the merchant for each such customer to submit a separate individual request to the state motor vehicle department to verify the accuracy of the personal information submitted by the customer, under section 2721(b)(3). Any such process would obviously take way too long to be of any use to either the customer or the merchant, and would moreover flood the state department with more requests than it could possibly handle. So, the merchant buys the state department's entire data base and from it extracts on that occasion that particular customer's information, and later performs the same task as to the next such customer in the line. Plaintiffs would have us hold that the merchant violates the DPPA by acquiring the data base even though every single actual use made of it is an

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> While the release of this information to direct marketers does not pose any inherent safety risks to people, it does present, to some people, an invasion of privacy. If you review the way in which people are classified by direct marketers based on DMV information you can see why some individuals might object to their personal information being sold." *Id.* at 2.

authorized use under section 2721(b), so long as there is at least one name in the data base as to which no actual use is made. We reject that contention.

As the State of Texas points out in its amicus brief, under the plaintiffs approach, an attorney who buys a set legal reporters does not do so for the purpose of use for legal research *unless* that attorney plans on reading every opinion in every volume of those reporters. A lawyer will never read all the opinions in all 1,000 volumes of Federal Second (and may likely never read anything in at least a few of the volumes). But he or she still buys the reporter set for the purpose of legal research. We hold that the text and legislative history dictate that when a person obtains motor vehicle records in bulk for one of the permissible uses listed in 18 U.S.C. § 2721(b), and does not actually use, or intend to use, any of the information in a manner prohibited by section 2721(b), then that person does not obtain the records for a purpose not permitted under Chapter 123 of Title 18.[11]

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11. The plaintiffs suggest that Congress intended the states to perform a gate-keeping function and distributing in bulk hinders the states' ability to keep track of these records. *See Locate.Plus.com v. Iowa Dep't of Transp.*, 650 N.W.2d 609, 617 (Iowa 2002). The statute, however, expressly contemplates resale of the information once distributed. § 2721(c). Further, it creates a private right of action. § 2724. Resale makes it more difficult for the states to monitor use of the information. The individual right of action allows persons other than the state to check use of these records. The *Locate* opinion's "gate-keeping" theory is not persuasive of a congressional intent to preclude bulk distribution where actual use permitted under § 2721(b) is intended and no actual use not permitted under § 2721(b) is intended.

B. Resellers

We now address the plaintiffs' claims against the resellers. The plaintiffs alleged that reseller defendants must first have themselves made a permissible use for the DMV records before they could resell to others under 18 U.S.C. § 2721(c). In their briefs and at oral argument, the plaintiffs could not articulate, and we could not find, any reason why Congress would require resellers to actually use the records before selling the records.[12] Instead, plaintiffs simply relied on their reading of the text to produce that result. *But cf. Waggoner v. Gonzales*, 488 F.3d 632, 638 (5th Cir. 2007) ("We are mindful of the common mandate of statutory construction to avoid absurd results."). Not convinced, the district court held that plaintiffs had no obtainment claim against the reseller defendants under the DPPA based on the reasoning in *Russell v. Choicepoint Servs.*

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12. In fact, solid reasons exist why Congress likely intended bulk distribution to resellers. Congress intended persons use these records for purposes such as preventing fraud when cashing checks. *E.g.*, 18 U.S.C. § 2721(b)(3). These are such uses that practically could not be performed individually, not only from the perspective of private companies but from the perspective of the states. For example, a credit card company may approve more than nineteen million credit card applications per year. *Personal Information Acquired by the Government Information Resellers: Is There Need for Improvement?, J. Hearing Before the Subcomm. on Commercial and Admin. Law and the Subcomm. on the Constitution of the Comm. on the Judiciary H.R.*, 109th Cong. 65-66 (2006). Ninety thousand applications are processed daily. *Id.* That alone may be 90,000 requests that a state would have to individually verify every day.

Inc., 300 F. Supp. 2d 450, 454-61 (E.D. La. 2004). It observed that section 2721(c) allowed "authorized recipients" to resell information. *Id.* This section did not require "authorized recipients" to also be authorized users under 18 U.S.C. § 2721(b). Therefore, authorized recipients did not need an authorized use before they could resell the information to those who did have a permissible use.

The plaintiffs counter authorized recipients must have an authorized use because the statute expressly refers to certain authorized recipients as being recipients "under" a permissible use. For example:

> "An authorized recipient . . . (except a recipient under subsection (b)(11) or (12)) . . .
>
> An authorized recipient under subsection (b)(11) . . .
>
> An authorized recipient under subsection (b)(12) . . ."

18 U.S.C. § 2721(c).

Like the district court, we hold that the only reasonable construction of "authorized recipient" requires no actual use. Instead, an authorized recipient is authorized to resell to individuals for one or more of the specific purposes under section 2721(b). *See Russell v. Choicepoint Servs., Inc.*, 300 F. Supp. 2d 450, 455-57 (E.D. La. 2004) (The court goes into great detail in its careful analysis of "authorized recipient.").

Our construction of the statute alleviates the concerns the plaintiffs believe exist.[13] This construction allows "authorized recipient" to mean something different than one who has a permissible actual use. *See Corley v. United States*, 129 S. Ct. 1558, 1566, 173 L. Ed. 2d 443 (2009) (a court should give each word effect). It also gives meaning to the language of section 2721(c) that refers to recipients "under" subsection (b). 18 U.S.C. § 2721(c). An authorized recipient would be "under subsection (b)(12)," for example, if the State gives him the data for the purpose of reselling it to a

13. In argument, plaintiff also relies on two cases. *See Locate.Plus.Com, Inc. v. Iowa Dep't of Transp.*, 650 N.W.2d 609 (Iowa 2002); *Roberts v. The Source for Pub. Data*, No. 08-4167-CV-C-NKL, 2008 U.S. Dist. LEXIS 100628, 2008 WL 5234675 (W.D. Mo. Dec. 12, 2008) (unpublished op.). Neither are binding precedent. *Locate.Plus.Com* observed that each permissible use exception listed a user and a specific use for the information. *Locate.Plus.Com., Inc.*, 650 N.W.2d at 617. It reasoned, therefore, Congress intended dissemination *only* to a "permissible user." *Id.* Just because the statute allows only certain types of people to use the information does not mean that the statute limits *possession* to those same individuals. The text of the statute contemplates uses and users in the list of exceptions; it contemplates resellers in a different subsection. 18 U.S.C. § 2721(b), (c). *Roberts*, on the other hand, makes a statutory construction argument that practically writes the reseller provision out of statute. *See Roberts*, 2008 U.S. Dist. LEXIS 100628, 2008 WL 5234675, at *4 (reasoning that section 2722 prohibits obtaining information for any purpose other than a permissible use listed in 2721(b) would make no sense if a reseller can obtain information for a purpose other than one listed in 2721(b) — to resell information). Moreover, reselling to an authorized actual user is not itself an actual use.

person who uses it for marketing in conformity with (b)(12). There is no allegation that any of the defendants is not an authorized recipient under Texas law, which plainly provides for such resellers in a manner consistent with the DPPA. Moreover, the DPPA's criminal and civil sanctions police unauthorized recipients and users without a permissible actual use. 18 U.S.C. §§ 2723, 2724.

The Department of Justice issued an advisory opinion that supports this conclusion. On October 9, 1998, the Special Counsel to the Assistant Attorney General, in the Civil Division, issued an advisory letter opinion responding to the question of whether Massachusetts may release personal information to a commercial distributor who disseminates the information only to other authorized recipients or entities that use the information solely for authorized purposes. Unpublished Letter from Robert C. McFetridge, Special Counsel to the Assistant Attorney General, to Peter Sacks, Office of the Attorney General for the Commonwealth of Massachusetts (on file with this Court and as a part of the record below). This advisory opinion concluded that the DPPA allowed for such releases. *Id.* Because the Attorney General is expressly charged with imposing civil sanctions against States having a policy or practice of substantial noncompliance with the DPPA, this advisory opinion serves as persuasive support for the conclusion that a reseller may obtain DMV records and sell them without first itself actually using or intending to use those records. *See* 18 U.S.C. § 2723(b), note 4 *supra*. Moreover, since that Department of Justice opinion the statute has

been amended (in October 1999) without any change which would alter that result.[14]

II. Standing

We need not address the statutory standing issue because we have affirmed the district court's dismissal under Rule 12(b)(6). *Verizon Commc'n Inc. v. Law offices of Curtis V. Trinko, LLP,* 540 U.S. 398, 124 S.Ct. 872, 883 n.5, 157 L. Ed. 2d 823 (2004) (citing *Steel Co. v. citizens for a Better Environment,* 523 U.S. 83, 118 S. Ct. 1003, 1013 n.2, 140 L. Ed. 2d 210 (1998)).[15] While the

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14. We further note that the 1998 Department of Justice opinion is inconsistent with any notion that bulk distribution is itself necessarily prohibited by the DPPA, and thus likewise fully supports the position of the defendants non-resellers.

15. *See also James v. City of Dallas,* 254 F.3d 551, 562 n.9 (5th Cir. 2001) ("In cases in which statutory standing is involved, we may address statutory standing before Article III standing.").

Assuming, *arguendo,* that we also need to address Article III standing, that too is present. It is undisputed that the DPPA protects from *certain uses or disclosures* personal information of plaintiffs and creates a federal cause of action for same, and that such personal information of plaintiffs was actually included in the challenged bulk distributions by Texas DPS. Moreover, plaintiffs' claim that such bulk distributions (including the personal information of these plaintiffs) are prohibited, and constitute a disclosure or use made illegal, by the DPPA which affords plaintiffs a federal cause of action for such disclosure or use of their personal information, though clearly without merit, is nevertheless not wholly insubstantial and frivolous, and hence gives the district court jurisdiction to decide whether or not the DPPA does preclude such distributions or uses. *See Bell v. Hood,* 327 U.S. 678, 66 S.Ct. 773, 776-77, 90 L. Ed. 939 (1946).

district court did dismiss *sua sponte* some defendants who did not join the motion to dismiss, there is no prejudice to the plaintiffs in affirming the judgment in its entirety because the plaintiffs make the same allegations against all defendants.

CONCLUSION

We affirm the judgment of the district court. We hold that a person who buys DMV records in bulk does so for the purpose of making permissible actual use of information therein under 18 U.S.C. § 2721(b), even if that person does not actually use every single item of information therein. We also hold that the plain language of 18 U.S.C. § 2721 allows resale of DMV records to one who is authorized and proposes to make actual use thereof as permitted under section 2721(b) notwithstanding that the seller does not actually use or intend to use the records before resale.

AFFIRMED

DENNIS, Circuit Judge, concurring:

I fully agree with the majority's analysis of the Driver's Privacy Protection Act and its conclusion that the plaintiffs have failed to state a claim upon which relief can be granted. However, I believe that *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 93-101, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998), requires us to decide whether the plaintiffs have Article III standing. "In [*Steel Co.*], [the Supreme] Court adhered to the rule that a federal court may not hypothesize subject-matter jurisdiction for the purpose of deciding the merits." *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 577, 119 S. Ct. 1563, 143 L. Ed. 2d 760 (1999). *See also, e.g., United States v. Tex. Tech Univ.*, 171 F.3d 279, 287 (5th Cir. 1999); 13 Charles Alan Wright et al., Federal Practice and Procedure: Jurisdiction and Related Matters § 3522, at 142 (3d ed. 2008).

The plaintiffs in this case have Article III standing for the reason stated in footnote 15 of the majority opinion: they allege that the defendants have used their personal information in a manner that is prohibited by the DPPA. Thus, their allegations fulfill the three requirements of the "irreducible constitutional minimum of standing": an injury in fact (i.e., the invasion of an interest which the plaintiffs argue is legally protected), which was caused by the defendants and which would be redressed by a judgment against the defendants. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). "It is firmly established . . . that the absence of a valid

(as opposed to arguable) cause of action does not implicate subject-matter jurisdiction." *Steel Co.*, 523 U.S. at 89. Thus, our holding that the plaintiffs have failed to state a valid claim under the DPPA does not alter the fact that the plaintiffs have Article III standing.

APPENDIX B — FINAL JUDGMENT OF THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF TEXAS MARSHALL DIVISION DATED OCTOBER 16, 2008 AND FILED NOVEMBER 4, 2008

CIVIL ACTION NOS. 2:07cv0001
2:07cv00012; 2:07cv00014
2:07cv00017; 2:07cv00018
2:07cv00410

SHARON TAYLOR, ET AL.,

v.

ACXIOM CORPORATION, ET AL.

JUDGE DONALD E. WALTER

FINAL JUDGMENT

Before this Court is Plaintiffs' Second Motion to Amend Judgment [Document 109]. In compliance with the stay granted in the above captioned matter and the injunction ordered by Judge Martinez in the Fresco Litigation, pending in the United States District Court for the Southern District of Florida, Plaintiffs' Motion is hereby **GRANTED**.

The Judgment rendered on September 9, 2008, remains in effect to the extent that all claims against Defendants in Civil Action Nos. 07-0013, 07-0014, 07-0017, 07-0018, and 07-410, and the Defendants in No. 07-0001 who are participating in the Fresco Litigation, are **DISMISSED WITH PREJUDICE.** This court will

defer its judgment with respect to the Defendants in Civil Action No. 07-0001 who are participating in the Fresco Litigation until the injunction against Plaintiffs has been removed.

THUS DONE AND SIGNED in Shreveport, Louisiana, this 16th day of October, 2008.

/s/ Donald E. Walter

DONALD E. WALTER
UNITED STATES DISTRICT JUDGE

APPENDIX C — FINAL JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, MARSHALL DIVISION DATED OCTOBER 1, 2008 AND FILED OCTOBER 10, 2008

CIVIL ACTION NO. 2:07cv0001

SHARON TAYLOR, ET AL.

v.

ACXIOM CORPORATION, ET AL.

JUDGE DONALD E. WALTER

JUDGMENT

Before this Court is Plaintiffs' Motion to Amend Judgment [Document 106]. In compliance with the stay granted in the above captioned matter and the injunction ordered by Judge Martinez in the Fresco Litigation, Plaintiffs' Motion is hereby **GRANTED**.

The Judgment rendered on September 9, 2008, remains in effect to the extent that all claims against Defendants in Civil Action Nos. 07-0013, 07-0014, 07-0017, 07-0018, and 07-410 are **DISMISSED WITH PREJUDICE**. This court will defer its judgment in Civil Action No. 07-0001 until the injunction against Plaintiffs has been removed.

Appendix C

THUS DONE AND SIGNED in Shreveport, Louisiana, this 1st day of October, 2008.

/s/ Donald E. Walter

DONALD E. WALTER
UNITED STATES DISTRICT JUDGE

APPENDIX D — JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, MARSHALL DIVISION DECIDED SEPTEMBER 8, 2008 AND FILED SEPTEMBER 9, 2008

CIVIL ACTION NO. 2:07cv0001 (LEAD)
C/W 2:07-0013, 2:07-0014, 2:07-0017, 2:07-0018, 2:07-0410

JUDGE DONALD E. WALTER

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, MARSHALL DIVISION

SHARON TAYLOR, ET AL.

v.

ACXIOM CORPORATION, ET AL.

September 8, 2008, Decided
September 9, 2008, Filed

JUDGMENT

Before this Court is a Motion to Dismiss on Common Issues and Response to Plaintiffs' Statement of Violations filed pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6) on behalf of American Driving Records, Inc., d/b/a First Advantage, a/k/a Agency Records, Inc., Southwestern Bell Telephone, L.P. d/b/a Southwestern Bell Telephone Company, a Texas Limited Partnership, Safeway Inc., Academy, Ltd.,

Appendix D

Background Information Systems, Inc., HEB Grocery Company, LP, RealPage, Inc., FedChex, L.L.C, LML Payment Systems Corporation, D.B. Stringfellow, URAPI, The Hearst Corporation d/b/a Houston Chronicle, Texas Motor Transportation Association, EmagineNet Technologies, Inc., Texas Farm Bureau Mutual Insurance Company, Defensive Driving Online, Ltd., Household Drivers Report, Inc. d/b/a HDR, Inc., Spartan Insurance Company, Insurance Technologies Corporation, ACS State & Local Solutions, Inc., Gila Corporation d/b/a Municipal Services Bureau, Hawkeye Insurance Services, Reliant Energy, Inc., American Student List, LLC, Source Data, Inc., Driver Training Associates, Inc. d/b/a TicketSchool.com, Jon Latorella, d/b/a LocatePlus Holdings Corporation, American Electric Power Service Corporation, Tenant Tracker, Inc., JI Specialty Services, Inc., Lee Farish Computer Services, Inc., National Statistical Services Corporation, American Municipal Services, Ltd., Globe Life Accident and Insurance Company, ADP Screening and Selection Services, Inc., Softech International, Inc., Talbot Group, Inc., Safety-USA Institute, LLC, Paradise Development, Inc. d/b/a Drivesafe Defensive Driving, Aristotle International, Inc., Defensive Driver Online, Ltd., Global 360 BGS, Inc., ABC Data, Inc. d/b/a Unicard Systems, Inc., Biometric Access Company, ContinuedEd.com d/b/a Idrivesafely.com, Zebec Data Systems, Inc., InfoNation, Inc., Allied Resident/ Employee Screening Service, Inc., United Teacher Associates Insurance Company, Federated Retail Holdings, Inc., f/k/a The May Department Stores Company d/b/a Foley's, Cross-Sell, Inc., Industrial Foundation of America, PropertyInfo Corporation,

Appendix D

Marshall Systems Technology, Inc., U.S. Interactive, Inc., Dallas Computer Information Systems, Realty Computer Solutions, Inc. d/b/a Real-Comp, Acxiom Risk Mitigation, Inc., Acxiom Corporation, TeleCheck Services, Inc., Carfax, Inc., and ISO Claims Service, Inc. d/b/a Insurance Information Exchange (hereinafter "Defendants"). For the reasons assigned herein, the Consolidated Motion to Dismiss is **GRANTED.**

I. Background

In 2007, Plaintiffs filed six separate, but virtually identical, lawsuits in the Eastern District of Texas against more than 100 defendants alleging violations of the Driver's Privacy Protection Act ("DPPA"). The Defendants, though comprised of vastly different business organizations, can be broken into two distinct categories: (1) those who obtain information directly from the State of Texas for their own use ("Non-Sellers")[1], and (2) those who obtain information from the

1. Defendants referred to as "Non-Sellers" are: Southwestern Bell Telephone, L.P. d/b/a Southwestern Bell Telephone Company, a Texas Limited Partnership, Safeway Inc., Academy, Ltd., HEB Grocery Company, LP, D.B. Stringfellow, The Hearst Corporation d/b/a Houston Chronicle, Texas Motor Transportation Association, Texas Farm Bureau Mutual Insurance Company, Defensive Drive Online, Ltd., Spartan Insurance Company, Insurance Technologies Corporation, ACS State & Local Solutions, Inc., Gila Corporation d/b/a Municipal Services Bureau, Hawkeye Insurance Services, Reliant Energy, Inc., Driver Training Associates, Inc. d/b/a TicketSchool.com, American Electric Power Service Corporation, Tenant Tracker, Inc., JI Specialty Services, Inc., Lee Farish Computer Services, (Cont'd)

State of Texas solely for the purpose of resale to others ("Resellers")[2]. Plaintiffs argue that the Non-Sellers are liable because although they may have a permissible use under the DPPA for obtaining some "personal information" from the Texas Department of Public Safety database, it is impermissible for them to obtain

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(Cont'd)

Inc., American Municipal Services, Ltd., Globe Life Accident and Insurance Company, Softech International, Inc., Safety-USA Institute, LLC, Paradise Development, Inc. d/b/a Drivesafe Defensive Driving, Defensive Driver Online, Ltd., Global 360 BGS, Inc., ABC Data, Inc. d/b/a Unicard Systems, Inc., ContinuedEd.com D/B/A Idrivesafely.com, United Teacher Associates Insurance Company, Federated Retail Holdings, Inc., f/k/a The May Department Stores Company d/b/a Foley's, Cross-Sell, Inc., Industrial Foundation of America, Marshall Systems Technology, Inc., U.S. Interactive, Inc., Carfax, Inc., and ISO Claims Service, Inc. d/b/a Insurance Information Exchange.

2. Defendants referred to as "Resellers" are: American Driving Records, Inc., d/b/a First Advantage, a/k/a Agency Records, Inc., Background Information Systems, Inc., RealPage, Inc., FedChex, L.L.C, LML Payment Systems Corporation, URAPI, EmagineNet Technologies, Inc., Household Drivers Report, Inc. d/b/a HDR, Inc., American Student List, LLC, Source Data, Inc., Jon Latorella, d/b/a LocatePlus Holdings Corporation, National Statistical Services Corporation, ADP Screening and Selection Services, Inc., Talbot Group, Inc., Aristotle International, Inc., Biometric Access Company, Zebec Data Systems, Inc., InfoNation, Inc., Allied Resident/Employee Screening Service, Inc., PropertyInfo Corporation, Dallas Computer Information Systems, Realty Computer Solutions, Inc. d/b/a Real-Comp, Acxiom Risk Mitigation, Inc., Acxiom Corporation, and TeleCheck Services, Inc.

the entire database without immediate use of the data obtained. Plaintiffs argue that the Resellers are liable because resale is not a permissible purpose for obtainment under the DPPA.

II. Driver's Privacy Protection Act

In the late 1980s, Rebecca Schaeffer starred on the television show *My Sister Sam.* In 1989, Robert Bardo, an obsessed "fan," hired a private investigator to follow her. The investigator copied down her license plate number and obtained her home address from the State's Department of Motor Vehicles ("DMV"). When Bardo received her home address, he went to Schaeffer's home and murdered her. *See* 139 Cong. Rec. S15,765 (1993). Around the same time, another woman was murdered in Tempe, Arizona, five women in California were sent threatening letters from a 31-year-old man, and several owners of expensive cars in Iowa were robbed by a gang of teenagers. Like Bardo, all of the other criminals obtained their victim's addresses from the State's Department of Motor Vehicles. *See* 139 Cong. Rec. S15,745-01 (1993). Following these incidents, public concern grew over the availability of personal information maintained by state motor vehicle departments.

Additionally, Congress was concerned with the practice by many states of selling personal information maintained by the DMV to businesses and marketers. Citizens were being flooded with junk mail and unwanted solicitations. *Reno v. Condon,* 528 U.S. 141,

143-144, 120 S. Ct. 666, 668, 145 L. Ed. 2d 587 (2000); 183 ALR Fed. 37 § 2.

To address these concerns, Congress enacted the Driver's Privacy Protection Act of 1994 ("DPPA"), 18 U.S.C. §§ 2721-2725.[3] The DPPA generally makes it unlawful for the State DMV, and "any officer, employee, or contractor thereof" to "knowingly disclose or otherwise make available to any person or entity personal information...about any individual obtained by the department in connection with a motor vehicle record." 18 U.S.C. § 2721(a)(1). The Act also prohibits a private actor from "knowingly obtain[ing], disclos[ing], or us[ing] personal information, from a motor vehicle record, for a purpose not permitted under [section 2721(b) of this title]." 18 U.S.C. § 2724(a). "Personal information" is defined as "information that identifies

3. *See Margan v. Niles*, 250 F. Supp. 2d 63, 68-69 (N.D.NY, 2003); 139 Cong. Rec. S15,754-01, S15,764-66 (1993) (statements of Sens. Robb, Biden, and Harken stating "[t]his amendment closes a loophole in the law that permits stalkers to obtain—on demand—private, person information about their potential victims" and discussing the following incidents where (1) anti-abortion activists obtained the personal information of an ob/gyn patient from DMV records and sent her threatening letters; and (2) a "fan" of a fashion model who obtained her address from the DMV, then went to her home and assaulted her); *see also* 139 Cong. Rec. S15, 745-01 (1993) (statement of Senator Boxer discussing situations where (1) a 31-one-year old man copied the license plate number of five women in their early twenties, obtained their personal information from the DMV and sent them threatening letters; and (2) a gang of teenagers in Iowa copied the license plate numbers of expensive cars, obtained the home addresses of the owner's of those cars, and then robbed them).

an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status." 18 U.S.C. § 2725(3).

While the DPPA generally prohibits a state from disclosing personal information, the statute sets out a number of "permissible uses" for which personal information may be disclosed:

> Permissible uses.—Personal information referred to in subsection (a) shall be disclosed for use in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls, or advisories, performance monitoring of motor vehicles and dealers by motor vehicle manufacturers, and removal of non-owner records from the original owner records of motor vehicle manufacturers to carry out the purposes of titles I and IV of the Anti Car Theft Act of 1992, the Automobile Information Disclosure Act (15 U.S.C. 1231 et seq.), the Clean Air Act (42 U.S.C. 7401 et seq.), and chapters 301, 305, and 321-331 of title 49, and, subject to subsection (a)(2), maybe disclosed as follows:
>
> (1) For use by any government agency, including any court or law enforcement

agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions.

(2) For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers.

(3) For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only—

(A) to verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

(B) if such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or

recovering on a debt or security interest against, the individual.

(4) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State, or local court.

(5) For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.

(6) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating or underwriting.

(7) For use in providing notice to the owners of towed or impounded vehicles.

(8) For use by any licensed private investigative agency or licensed security service for any purpose permitted under this subsection.

(9) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under chapter 313 of title 49.

(10) For use in connection with the operation of private toll transportation facilities.

(11) For any other use in response to requests for individual motor vehicle records if the State has obtained the express consent of the person to whom such personal information pertains.

(12) For bulk distribution for surveys, marketing or solicitations if the State has obtained the express consent of the person to whom such personal information pertains.

(13) For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains.

(14) For any other use specifically authorized under the law of the State that holds the record, if such use is related to the operation of a motor vehicle or public safety.

18 U.S.C. § 2721(b).

Appendix D

The DPPA also provides for resale or redisclosure of personal information obtained by "authorized recipients:"

> Resale or redisclosure.—An authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b) (11) or (12)). An authorized recipient under subsection (b)(11) may resell or redisclose personal information for any purpose. An authorized recipient under subsection (b)(12) may resell or redisclose personal information pursuant to subsection (b)(12). Any authorized recipient (except a recipient under subsection (b)(11)) that resells or rediscloses personal information covered by this chapter must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

18 U.S.C. § 2721(c).

Persons who violate the DPPA may be subject to a criminal fine as well as civil liability for (1) actual damages, (2) punitive damages, (3) reasonable attorneys' fees and other litigation costs, and (4) preliminary and equitable relief. 18 U.S.C. §§ 2723(a), 2724(b).

III. Analysis

Defendants' Consolidated Motion to Dismiss presents a two-pronged argument for dismissal: (1) failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6), and (2) lack of standing pursuant to Rule 12(b)(1). Ordinarily, a Rule 12(b)(1) motion must be considered first when filed in conjunction with other Rule 12(b) motions. *Ramming v. U.S.*, 281 F.3d 158, 161 (5th Cir. 2001). This requirement prevents a court without subject matter jurisdiction from prematurely dismissing a case with prejudice. *Id.* However, in the instant matter, this Court will discuss Defendants' Rule 12(b)(6) argument before addressing standing because the Court's interpretation of the DPPA will determine the scope, if any, of plaintiffs' injuries-in-fact.

A. *Rule 12(b)(6)*

Rule 12(b)(6) authorizes the dismissal of a complaint for "failure to state a claim upon which relief may be granted." Civ. P. 12(b)(6). While a complaint does not need detailed factual allegations, a formulaic recitation of the elements of a cause of action will not suffice. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 1964-65, 167 L. Ed. 2d 929 (2007). Federal Rule of Civil Procedure 8(a)(2) requires a "showing," not merely a blanket assertion, of entitlement to relief. *Id.* at n.3. The factual allegations in the complaint "must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are

true (even if doubtful in fact)." *Id.* at 1965 (internal citations omitted).

Non-Sellers. Section 2724(a) of the DPPA sets forth three elements giving rise to liability: (1) the defendant knowingly obtained, disclosed, or used personal information, (2) from a motor vehicle record, (3) for a purpose not permitted. With regard to the third element, Plaintiffs' bear the burden to prove that the personal information was not obtained, disclosed, or used for a purpose specifically enumerated in Section 2721(b). *See Thomas v. George, Hartz, Lundeen, Fulmer, Johnstone, King, and Stevens, P.A.*, 525 F.3d 1107, 1111-14 (11th Cir. 2008).

Plaintiffs allege that the Non-Sellers obtained their "personal information" for an impermissible purpose—"to save [themselves] time and/or money by not having to go back to the State of Texas each time [they] need additional information" and "to avoid the inconvenience of having to go to the State each time [they] need an additional customers' information." [Statement of Violations, No. 07-0001, Doc. 62]. Plaintiffs claim that any purpose Defendants had for obtaining their "'personal information' other than an immediately contemplated use of the information for one of the DPPA's authorized uses" constitutes a violation of the DPPA. *Id.* Defendants' choice to obtain the entire database, containing the personal information of over twenty million individuals, is the basis for Plaintiffs' improper obtainment claims. Plaintiffs' also allege that the continued use of the information obtained by Defendants' "is not an enumerated use and is contrary

to [the DPPA's] provisions." *Id.* In other words, Plaintiffs do not allege that Defendants' have obtained or used their personal information for an impermissible purpose; rather, they argue only that obtainment of the entire database was impermissible as Defendants' did not immediately use the data.

This Court agrees with Defendants' that Plaintiffs factual allegations do not give rise to a plausible right to relief under the DPPA. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 1964-65, 167 L. Ed. 2d 929 (2007). The statute expressly provides that a private actor may be liable for civil damages only if that person "knowingly obtains, discloses, or uses personal information, from a motor vehicle record, *for a purpose not permitted under this chapter.*" 18 U.S.C. § 2724(a) (emphasis supplied). Plaintiffs have failed to plead any facts alleging that Defendants obtained or used their information *for a purpose not permitted* under the Act. Plaintiffs' assertion that, because Defendants did not immediately use the data obtained, does not constitute an allegation of obtainment or use of "personal information" for an impermissible *purpose*.

Moreover, the plain language of the DPPA does not require that a person "immediately use" the data, nor has the statute been interpreted to imply such a requirement. [4] *See* 18 U.S.C. §§ 2721-2725. As such, this

4. As Defendants' point out in their Consolidated Motion, the DPPA does not prohibit the nonuse of data obtained for a permissible purpose, immediate or otherwise. When a company obtains data for a permissible purpose, neither the DPPA nor the cases that interpret it impose a requirement that the data be put to use at any point in the future.

Court refuses to interpret the DPPA to impose such an illogical restriction on the use of data obtained for a permissible purpose.

Resellers. Plaintiffs allege that Resellers are in violation of the DPPA because they obtained plaintiffs' personal information solely for the purpose of resale and were not themselves "users" of the information. Yet, the statute clearly and unambiguously permits "[a]n authorized recipient of personal information...[to] resell or redisclose the information." 18 U.S.C. § 2721(c). The only limitation placed on "authorized recipients" is that the information may be resold or redisclosed "only for a use permitted under subsection (b)." *Id.* The DPPA does not require an "authorized recipient" to also be an "authorized user."[5]

Plaintiffs reliance on *Locate.Plus. Com*[6] is misplaced. In *Locate.Plus.Com*, the Iowa Supreme Court concluded that "[t]he statute does not permit disclosure to a nonuser, who only seeks information to redisclose it for use under a permitted purpose." *Id. at 617*. Yet the court reached this conclusion without providing a meaningful analysis of the DPPA's statutory language or its

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5. *See Russell v. Choicepoint Servs., Inc.*, 300 F. Supp. 2d 450 (E.D.La, 2004) ("*Russell I*"); *Russell v. Choicepoint Servs., Inc.*, 302 F. Supp. 2d 654 (E.D.La, 2004) ("*Russell II*").

6. *Locate.Plus.Com, Inc. v. Iowa Dept. Of Transp.*, 650 N.W.2d 609 (Iowa, 2002).

corresponding congressional intent.[7] In fact, the rationale of *Locate.Plus.Com* was expressly rejected in *Russell I* and *Russell II* after that court embarked on a thorough analysis of Section 2721(c) of the DPPA.[8]

By using the term "authorized recipients" instead of "authorized users" or "permissible" users," Congress anticipated that entities like defendant Resellers would obtain drivers' personal information from DMV's solely for the purpose of redistributing the information to persons with permissible uses. *See Russell I*, 300 F. Supp. 2d at 455-56; *Russell II*, 302 F. Supp. 2d at 654. As the district court in the *Russell* cases stated:

> Congress could have limited resale and redisclosure to "permissible users," keeping in line with 18 U.S.C. § 2721(b)'s theme of permissible use, but instead Congress employed the term "authorized recipient" in § 2721(c). This deliberate word choice reveals congressional intent to allow states and their DMVs to authorize persons and entities to

7. In *Locate.Plus.Com*, the Court stated: "Redisclosure of the information is allowed only for a permitted purpose and can only occur if the information was initially disclosed by the state to an 'authorized recipient.'" The Court then concluded that "Worldwide must itself be an authorized user." However, the Court reached this conclusion without discussing the meaning of the term "authorized recipient" or Congress' intention in enacting Section 2721(c).

8. *See Russell I*, 300 F. Supp. 2d 450; *Russell II*, 302 F. Supp. 2d 654.

> receive drivers' information for resale. In enacting the DPPA, Congress intended to strike "a critical balance between legitimate governmental and business needs for this information, and the fundamental right of our people to privacy and safety." 139 Cong. Rec. S15,763 (1993). Congress was well aware of the economic value of DMV records and of the common state practice of selling drivers' personal information to private resellers. The inclusion of the term "authorized recipient" and the exclusion of any reference to "users" in DPPA § 2721(c) indicates an intent on behalf of Congress to delegate authorization to the states and thereby permit personal information resellers like [defendant] who are authorized by the state or its DMV to obtain drivers' personal information for the purpose of redistribution to persons with "permissible uses."

Russell I at 456-57; *Russell II* at 665.

The *Russell* court's interpretation of the term "authorized recipient" is further evidenced by the DPPA's requirement that any authorized recipient who resells or rediscloses personal information keep "records identifying each person or entity that receives information and the permitted use for which the information will be used and must make such records available to the motor vehicle department upon request." 18 U.S.C. § 2721(c).

Because the DPPA allows "authorized recipients" to obtain "personal information" solely for purposes of resale to third parties with permissible uses, Plaintiffs' may not maintain a DPPA claim against Resellers for improper obtainment under 18 U.S.C. § 2724(a) without alleging an accompanying impermissible use. *See Russell v. Choicepoint Servs., Inc.*, 300 F. Supp. 2d 450 (E.D.La, 2004) (hereinafter "*Russell I*"); *Russell v. Choicepoint Servs., Inc.*, 302 F. Supp. 2d 654 (E.D.La, 2004) (hereinafter "*Russell II*"); *see also Mechler v. Hodges*, 2005 U.S. Dist. LEXIS 45448, 2005 WL 1406102, *7 (S.D.Ohio, 2005). The basis of Plaintiffs' claims against Resellers is improper obtainment alone. They have failed to allege any facts indicating an impermissible use of the "personal information" obtained by Resellers. As such, Plaintiff's factual allegations do not give rise to plausible right to relief under the DPPA. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 1964-65, 167 L. Ed. 2d 929 (2007).

B. ***Rule 12(b)(1)***

A motion to dismiss filed pursuant to Federal Rule of Civil Procedure 12(b)(1) challenges the subject matter jurisdiction of the court. Fed. R. Civ. P. 12(b)(1). In evaluating a Rule 12(b)(1) motion, the district court may consider: "(1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of undisputed facts." *Ramming v. U.S.*, 281 F.3d 158, 161 (5th Cir. 2001). In the absence of subject matter jurisdiction, federal courts

lack the power to adjudicate claims. *See Stockman v. Federal Election Comm'n,* 138 F.3d 144, 151 (5th Cir. 1998). Plaintiffs, as the parties asserting jurisdiction in this matter, bear the burden to prove that jurisdiction does in fact exist. *Ramming,* 281 F.3d at 161.

In determining whether a federal district court has subject matter jurisdiction, the court must also consider whether the plaintiffs have standing. *See Center for Individual Freedom v. Carmouche,* 449 F.3d 655, 659 (5th Cir. 2006). The Supreme Court has set out three elements that must be met to constitute the irreducible constitutional minimum of "standing." *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560-61, 112 S.Ct. 2130, 2136, 119 L. Ed. 2d 351 (1992). First, the plaintiff must have suffered an "injury-in-fact"—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of. In other words, the injury has to be fairly traceable to the challenged action of the defendant and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *Id.* (internal quotations and citations omitted). Failure to establish any one of these three elements deprives the federal court of jurisdiction to hear the case. *Rivera v. Wyeth Ayerst Labs,* 283 F.3d 315, 319 (5th Cir. 2002).

Plaintiffs have failed to allege or plead any facts showing that Defendants, neither Non-Sellers or

Resellers, impermissibly obtained and/or used Plaintiffs' "personal information." Thus, Plaintiff's have not shown that they have suffered an "injury-in-fact." Further, they have not plead a causal connection between the alleged violations and the alleged harm, nor can they demonstrate redressability.

CONCLUSION

The DPPA does not require "immediate use" of personal information obtained from a State's Department of Motor Vehicles and Plaintiffs' have failed to allege an impermissible *purpose* for which the information was obtained by Non-Sellers. Plaintiffs have also failed to plausibly plead facts alleging that Resellers impermissibly used the data. Consequently, Plaintiffs have failed to state a claim upon which relief may be granted and, because they have not suffered an "injury-in-fact," lack standing to adjudicate their claim before this court.

For the reasons stated above, the Court will **GRANT** Defendants' Motion to Dismiss **WITH PREJUDICE** Pursuant to *Rule 12(b)(6)* and *Rule 12(b)(1)* and *sua sponte* **DISMISS WITH PREJUDICE** Plaintiffs' claims against all remaining Defendants in Nos. 07-0001, 07-0013, 07-0014, 07-0017, 07-0018, and 07-410.[9]

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9. "It is well-established that the district court may dismiss a complaint a 12(b)(6) grounds *sua sponte*." *Bell v. Valdez*, 207 F.3d 657, n.1 (5th Cir. 2000); *First Gilbraltar Bank v. Smith*, 62 F.3d 133, 135 (5th Cir. 1995); *Guthrie v. Tifco Industries*, 941 F.2d 374, 379 (5th Cir. 1991).

Appendix D

THUS DONE AND SIGNED in Shreveport, Louisiana, this 8th day of September, 2008.

/s/ Donald E Walter

DONALD E. WALTER
UNITED STATES DISTRICT JUDGE

APPENDIX E— RELEVANT STATUTORY PROVISIONS

18 USCS § 2721

§ 2721. Prohibition on release and use of certain personal information from State motor vehicle records

(a) In general. A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

(1) personal information, as defined in *18 U.S.C. 2725(3)*, about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section; or

(2) highly restricted personal information, as defined in *18 U.S.C. 2725(4)*, about any individual obtained by the department in connection with a motor vehicle record, without the express consent of the person to whom such information applies, except uses permitted in subsections (b)(1), (b)(4), (b)(6), and (b)(9): *Provided*, That subsection (a)(2) shall not in any way affect the use of organ donation information on an individual's driver's license or affect the administration of organ donation initiatives in the States.

(b) Permissible uses. Personal information referred to in subsection (a) shall be disclosed for use in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls, or advisories, performance

monitoring of motor vehicles and dealers by motor vehicle manufacturers, and removal of non-owner records from the original owner records of motor vehicle manufacturers to carry out the purposes of titles I and IV of the Anti Car Theft Act of 1992, the Automobile Information Disclosure Act (*15 U.S.C. 1231* et seq.), the Clean Air Act (*42 U.S.C. 7401* et seq.), and chapters 301, 305, and 321-331 of title 49 [*49 USCS §§ 30101* et seq., *30501* et seq., *32101* et seq.-*33101* et seq.], and, subject to subsection (a)(2), may be disclosed as follows:

(1) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions.

(2) For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers.

(3) For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only-

(A) to verify the accuracy of personal information submitted by the individual to the

business or its agents, employees, or contractors; and

(B) if such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.

(4) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State, or local court.

(5) For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.

(6) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating or underwriting.

(7) For use in providing notice to the owners of towed or impounded vehicles.

(8) For use by any licensed private investigative agency or licensed security service for any purpose permitted under this subsection.

(9) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under chapter 313 of title 49 [*49 USCS §§ 31301* et seq.].

(10) For use in connection with the operation of private toll transportation facilities.

(11) For any other use in response to requests for individual motor vehicle records if the State has obtained the express consent of the person to whom such personal information pertains.

(12) For bulk distribution for surveys, marketing or solicitations if the State has obtained the express consent of the person to whom such personal information pertains.

(13) For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains.

(14) For any other use specifically authorized under the law of the State that holds the record, if such use is related to the operation of a motor vehicle or public safety.

(c) Resale or redisclosure. An authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b) (11) or (12)). An authorized recipient under subsection (b)(11) may resell or redisclose personal information for any purpose. An authorized recipient under subsection (b)(12) may resell or redisclose personal information pursuant to subsection (b)(12). Any authorized recipient (except a recipient under subsection (b)(11)) that resells or rediscloses personal information covered by this chapter [*18 USCS §§ 2701* et seq.] must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

(d) Waiver procedures. A State motor vehicle department may establish and carry out procedures under which the department or its agents, upon receiving a request for personal information that does not fall within one of the exceptions in subsection (b), may mail a copy of the request to the individual about whom the information was requested, informing such individual of the request, together with a statement to the effect that the information will not be released unless the individual waives such individual's right to privacy under this section.

(e) Prohibition on conditions. No State may condition or burden in any way the issuance of an individual's motor vehicle record as defined in *18 U.S.C. 2725(1)* to obtain express consent. Nothing in this paragraph shall be construed to prohibit a State from charging an administrative fee for issuance of a motor vehicle record.

18 USCS § 2722

§ 2722. Additional unlawful acts

(a) Procurement for unlawful purpose. It shall be unlawful for any person knowingly to obtain or disclose personal information, from a motor vehicle record, for any use not permitted under section 2721(b) of this *title [18 USCS § 2721(b)]*.

(b) False representation. It shall be unlawful for any person to make false representation to obtain any personal information from an individual's motor vehicle record.

18 USCS § 2723

§ 2723. Penalties

(a) Criminal fine. A person who knowingly violates this chapter [*18 USCS §§ 2721* et seq.] shall be fined under this title.

(b) Violations by State department of motor vehicles. Any State department of motor vehicles that has a policy

or practice of substantial noncompliance with this chapter [*18 USCS §§ 2721* et seq.] shall be subject to a civil penalty imposed by the Attorney General of not more than $ 5,000 a day for each day of substantial noncompliance.

18 USCS § 2724

§ 2724. Civil action

(a) Cause of action. A person who knowingly obtains, discloses or uses personal information, from a motor vehicle record, for a purpose not permitted under this chapter [*18 USCS §§ 2721* et seq.] shall be liable to the individual to whom the information pertains, who may bring a civil action in a United States district court.

(b) Remedies. The court may award—

(1) actual damages, but not less than liquidated damages in the amount of $ 2,500;

(2) punitive damages upon proof of willful or reckless disregard of the law;

(3) reasonable attorneys' fees and other litigation costs reasonably incurred; and

(4) such other preliminary and equitable relief as the court determines to be appropriate.

Appendix E

18 USCS § 2725

§ 2725. Definitions

In this chapter [*18 USCS §§ 2721* et seq.]—

(1) "motor vehicle record" means any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles;

(2) "person" means an individual, organization or entity, but does not include a State or agency thereof;

(3) "personal information" means information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status.[;]

(4) "highly restricted personal information" means an individual's photograph or image, social security number, medical or disability information; and

(5) "express consent" means consent in writing, including consent conveyed electronically that bears an electronic signature as defined in section 106(5) of Public Law 106-229 [*15 USCS § 7006(5)*].